

From:

(b)(6);(b)(7)(C)

To:

SMITH, BRENDA BROCKMAN

(b)(6);(b)(7)(C)

Cc:

Bcc:

Subject:

FW: Content needed for OT Deep Dive Next Tues 5/9

Date:

Fri May 05 2017 10:02:25 EDT

Attachments:

ACE Update.docx

ADCVD.docx

C1 TFTEA Overview Briefing Book.pdf

Canadian Softwood Lumber.docx

FTA and Trade Preference Programs.docx

TFTEA Overview Session Agenda.docx

Trade EO issue paper - FY 18 budget and confirmation hearings(tr).docx

Wildlife Items Trafficking.doc

For our discussion later today.

(b)(6);(b)(7)(C)

Chief of Staff

Office of Trade

U.S. Customs and Border Protection

(b)(6);(b)(7)(C)

From (b)(6);(b)(7)(C)

Sent: Friday, May 05, 2017 9:59 AM

To: (b)(6);(b)(7)(C)

Cc: (b)(6);(b)(7)(C)

Subject: Content needed for OT Deep Dive Next Tues 5/9

Importance: High

Hi (b)(6);(b)(7)(C)

Hope all is well.

(b) (5)

Thank you so much for your help,

(b)(6);(b)(7)(C)

Congressional Affairs, CBP

(b)(6);(b)(7)(C)

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(b) (5)

POC FOR FURTHER QUESTIONS

CBP Contact (b)(6);(b)(7)(C)

Office: Office of Trade/ACE Business Office

Office Phone: (b)(6);(b)(7)(C)

Date Prepared: April 21, 2017

Approving Official: (b)(6);(b)(7)(C) Executive Director, ACE Business Office (ABO)/Trade Transformation Office (TTO) / Date Reviewed:
4/25/2017

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4/25/2017

**ANTIDUMPING/COUNTERVAILING DUTY ENFORCEMENT
OFFICE OF TRADE**

(b) (5)

1

POC FOR FURTHER QUESTIONS

CBP Contact (b)(6);(b)(7)(C) AD/CVD Enforcement Branch Chief

Office: AD/CVD Division, Trade Policy and Programs, Office of Trade

Office Phone: (b)(6);(b)(7)(C)

Date Prepared: April 25, 2017

Approving Official: (b)(6);(b)(7)(C) D/CVD Division Director / Date Reviewed: April 25, 2017

CBP FOIA 007397

**ANTIDUMPING/COUNTERVAILING DUTY ENFORCEMENT
OFFICE OF TRADE**

(b) (5)

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CBP Contact (b)(6);(b)(7)(C) D/CVD Enforcement Branch Chief

Office: AD/CVD Division, Trade Policy and Programs, Office of Trade

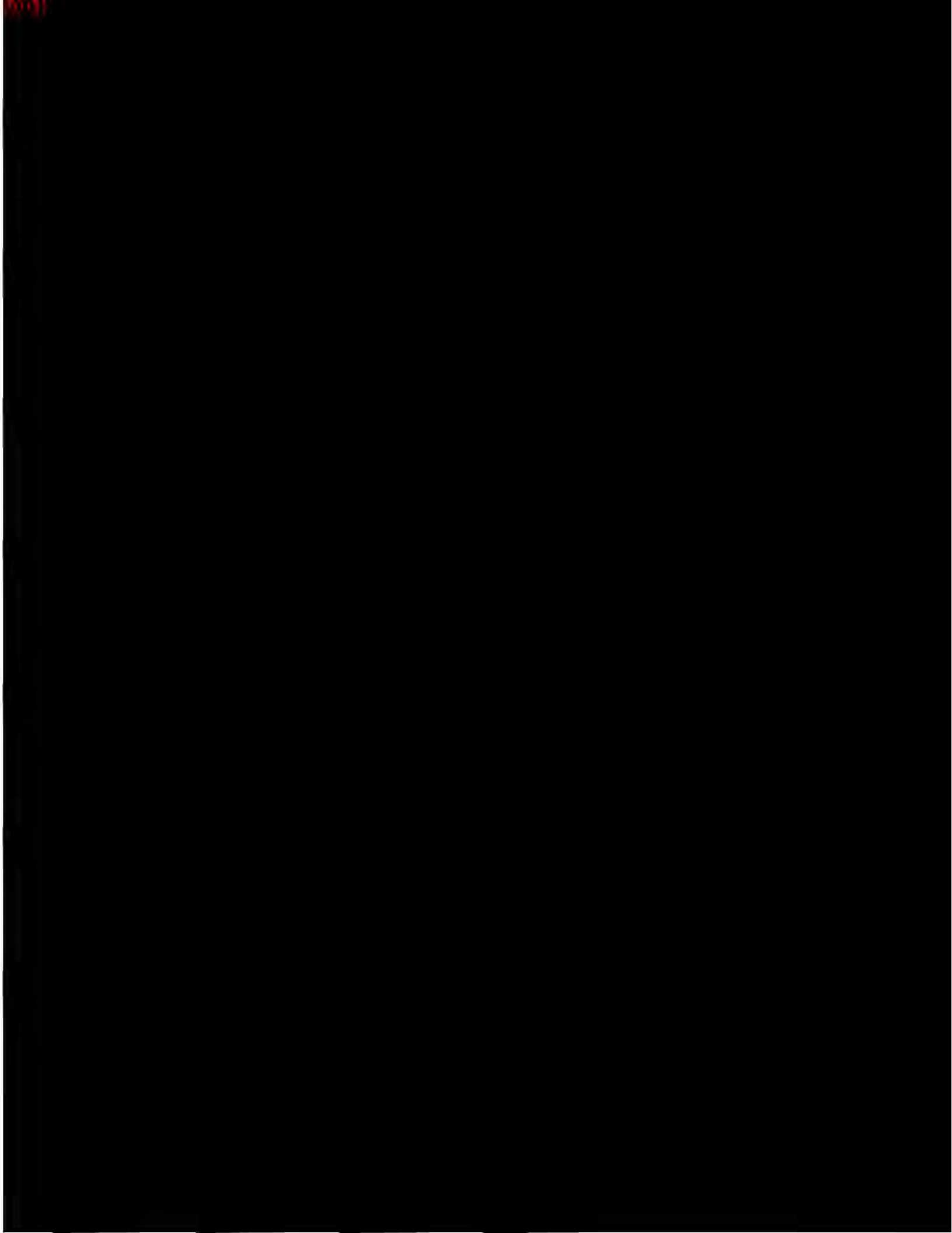
Office Phone: (b)(6);(b)(7)(C)

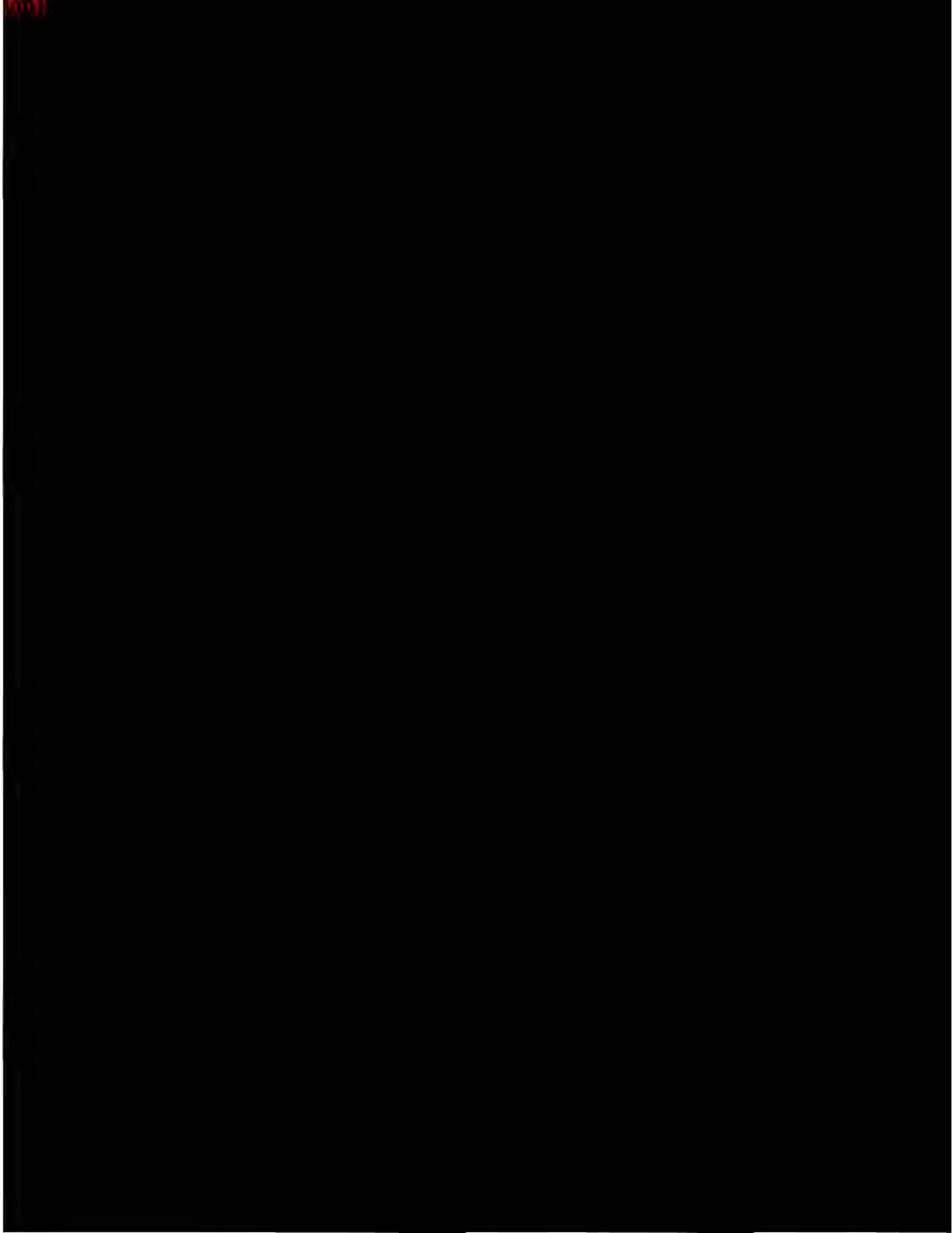
Date Prepared: April 25, 2017

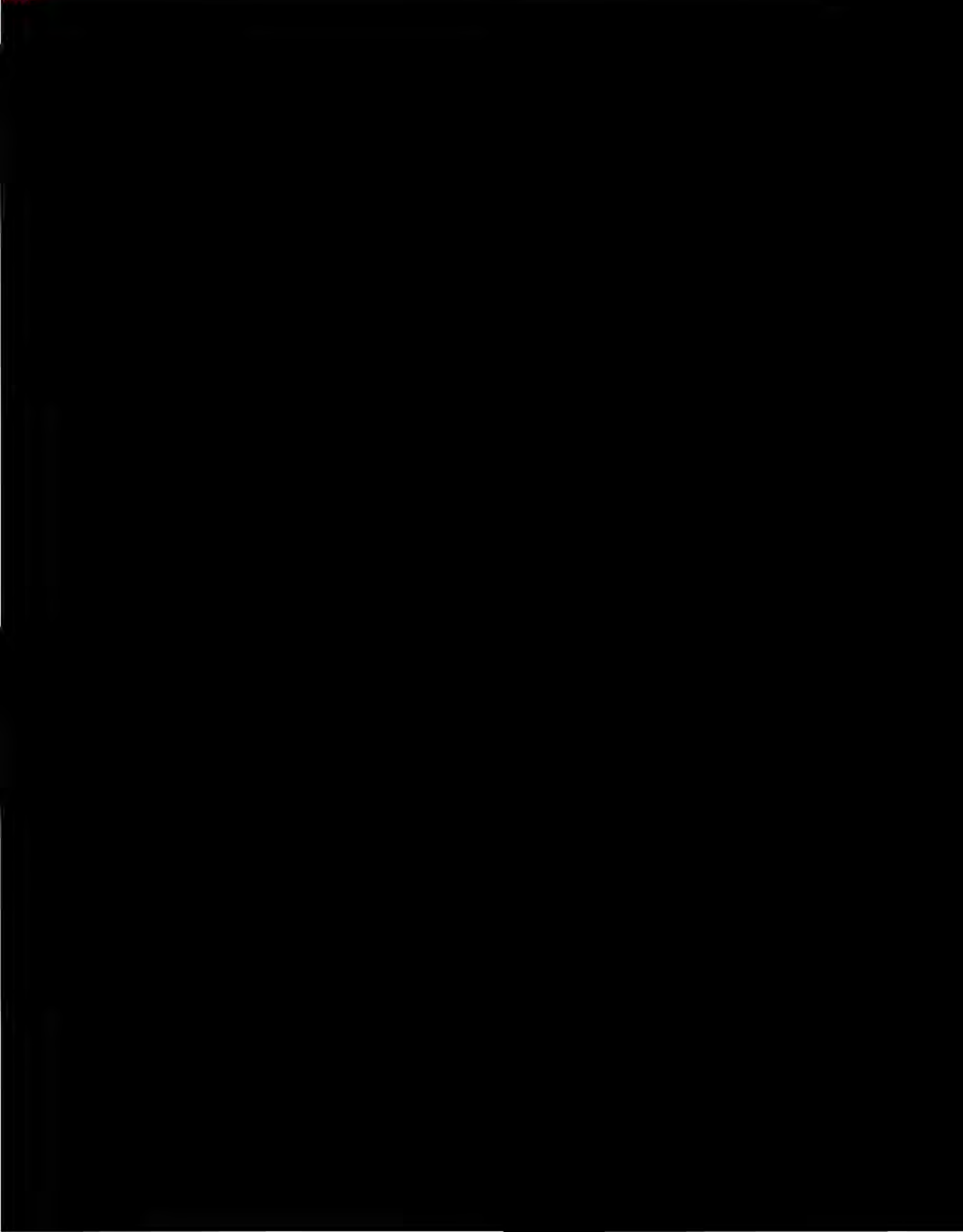
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CUSTOMS AND BORDER PROTECTION

Senate Committee On Finance Hearing On The Nominat., sked FINAL

March 14, 2017 5:53PM ET

TRANSCRIPT

March 14, 2017

COMMITTEE HEARING

SEN. ORRIN G. HATCH

CHAIRMAN

SENATE COMMITTEE ON FINANCE

WASHINGTON, D.C.

SENATE COMMITTEE ON FINANCE HEARING ON THE NOMINATION OF ROBERT
LIGHTHIZER TO BE U.S. TRADE REPRESENTATIVE

Roll Call, Inc.

1255 22nd Street N.W.

Washington, D.C. 20037

Transcript/Programming: Tel. 301-731-1728

Sales: Tel. 202-419-8500 ext 599

sales@cqrollcall.com

www.cqrollcall.com

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SPEAKERS:

SEN. ORRIN G. HATCH, R-UTAH

CHAIRMAN

SEN. CHARLES E. GRASSLEY, R-IOWA

SEN. MICHAEL D. CRAPO, R-IDAHO

SEN. PAT ROBERTS, R-KAN.

SEN. MICHAEL B. ENZI, R-WYO.

SEN. JOHN CORNYN, R-TEXAS

SEN. JOHN THUNE, R-S.D.

SEN. RICHARD M. BURR, R-N.C.

SEN. JOHNNY ISAKSON, R-GA.

SEN. ROB PORTMAN, R-OHIO

SEN. PATRICK J. TOOMEY, R-PA.

SEN. DEAN HELLER, R-NEV.

SEN. TIM SCOTT, R-S.C.

SEN. BILL CASSIDY, R-LA.

SEN. RON WYDEN, D-ORE.

RANKING MEMBER

SEN. DEBBIE STABENOW, D-MICH.

SEN. MARIA CANTWELL, D-WASH.

SEN. BILL NELSON, D-FLA.

SEN. ROBERT MENENDEZ, D-N.J.



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Before digging in to policy issues, there is another issue the committee has to address. As a legal matter, Mr. Lighthizer's previous work for foreign governments makes him ineligible to be appointed as the United States Trade Representative, pursuant to the lobbying disclosure act. The facts are clear but as was the case with Secretary Mattis, this administration and others before it has worked with the congress, when appropriate, to make exceptions. Speaking for Democrats, we are willing to work with Republicans to make a statutory exception for Mr. Lighthizer. But we also insist that Republicans work with Democrats to provide a lifeline with America's hardworking miners, who are now facing possible loss of healthcare and retirement benefits.

Mr. Lighthizer has an understanding about the impact of unfair trade on America's manufactures and workers that, in my view, could be a valuable asset to the country. The country needs a USTR who's gonna stand up for our rights, on behalf of our workers and our businesses at the World Trade Organization. Who's going to partner with the Customs and Border Protection Agency, The Department of Commerce, and the full range of agencies who are responsible for trade enforcement, to crack down on the rip-off artists, the cheats who hurt our workers and our businesses here at home.

After a campaign of shouting that the North American Free Trade Agreement could be the worst deal ever, the president came in to office and said our trade relationship with Canada - a NAFTA member - only needed, in his words, tweaking. The president spent the campaign talking tough about China. But his administration has largely been quiet about their plans when it comes to China's flagrantly unfair trade practices. So when I say that our trade policy needs to deliver results and not just talk, that's why we need to get in to specifics today.

My own view is that the agenda has gotta start, particularly in this season of March madness, with a vigorous, full-court press for tough trade enforcement. In my view, there are two prongs to effective trade enforcement. The first is to fully enforce the trade laws here at home. Foreign subsidies and dumping that harms American workers has to be identified quickly and remedied. And that requires strong enforcement at the border by customs officials.

Goods made with forced labor have to be barred from entering our country. Trade in stolen timber, and other natural resources that damage the environment and edge out hardworking Americans in the



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The second prong of effective trade enforcement is holding other countries to their commitments under deals that are already on the books. That means enforcing labor obligations, protecting the environment, or stopping countries from applying discriminatory policies that block out our digital goods and services. So when it comes to aggressive trade enforcement, the United States government can't deploy a full court press with only half a team.

That is why a number of Senate Democrats have thought that the hiring freeze was so short sighted. Because it leaves resources on the side line and it suggests that the tough talk on trade is not going to be much more than talk. So I hope that the forthcoming budget does not put more trade enforcers on the side lines. Because doing that would endanger good paying American jobs just to fund a more than \$50 billion give away to defense contractors.

In order to maximize economic opportunities for our exporters, our trade policy cannot end with effective enforcement of existing rules. It also has to reach overseas to dismantle foreign trade barriers that prevent American goods and services from competing on a level playing field.

Here's the stakes - 140 million people are joining the middle class every year, many of them in Asia. And the fact of the matter is, the trade jobs in that part of the world provides us an opportunity to pay better wages. They reflect a higher level of productivity and value added. What we say - and I've heard many of my colleagues here say it - what we're doing is growing things here, we're making things here, we're adding value to them here, and then we ship them somewhere. These opportunities are missed if we stay on the sidelines while other nations negotiate trade deals that advantage their exporters over ours.

This is especially true now in the Asia Pacific region. And that's exactly what happens as we sit here this afternoon. As we sit here today, Pacific Rim countries meet in Chili to discuss trade in the region. And the question is, where is U.S. leadership? With that said, whether it's through renegotiating NAFTA, looking to Asia or working on any other trade deal, transparency with the public and the Congress is essential.

The previous Congress passed a law that requires critical actions to ensure that the public and its' representatives in Congress are active partners in efforts to negotiate and implement future trade



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STABENOW: Thank you very much, Mr. Chairman.

And Mr. Lighthizer, welcome. I enjoyed very much our conversation in the office. And good to see you again. I look forward to seeing your waiver worked out on a bipartisan basis, and I'm very appreciative of the work and comments you've made in the past. We've got some important issues on trade to address that affect our workers.

We talked about Michigan and both making things and growing things -- agriculture, manufacturing, all of our businesses. I have a saying, as we talk about trade, that we should export our products, not our jobs. And I think that's something that you would agree with. And so I appreciate that very much.

I have to say, though, I think you have a very tough job. And I want to talk to you about that. Because as USTR, you're responsible for coordinating and monitoring and enforcing trade issues, existing trade agreements, future trade agreements. We in Michigan want a level playing field on trade, for intellectual property rights, as the chairman talked about, with China, or trade barriers with Japan, or currency manipulation, which you have spoken in the past extensively about.

But here's where I am deeply concerned right now. You're out fighting for American workers and businesses if you are confirmed. But your future boss President Trump and his family have business interests all over the world. And my constituents and I are very worried about what happens when the interests of American workers and businesses, in terms of enforcing our trade laws, are put at odds with the business interests of our president or his family.

I wondered if you might speak about how you stand up for American workers and businesses in that kind of a situation?

LIGHTHIZER: Thank you, Senator.

First of all, in all my conversations with the president, I have been honored to have several, he -- he speaks very strongly on enforcement and getting the best possible deals for American workers and American farmers and ranchers. His own business interests are never remotely referred to. I really don't personally know what they are.

The president is completely committed to the -- to the America first agenda, which I subscribe to, and



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STABENOW: Well, and I appreciate that very much. Here's my concern, and it's a very real, sincere concern. The president said on day one he would label China the currency manipulator. You've made very strong comments in the past China engages in currency manipulation; China is by far our biggest trade problem.

This is an issue that I've been working on years, both with China and with Japan and other countries. We've seen the president say that the grand champion of currency manipulation is China. But then we see on February 24th, Secretary Mnuchin signals the White House is not sure what they're going to do on currency manipulation.

But here's the concern that I have on that. Last week, China, after 12 years of court back and forth with Donald Trump and his family, has given provisional approval in an uncharacteristically swift manner, to 38 new trademarks for the Donald J. Trump brand to be put on businesses, construction businesses, all kinds of businesses, all kinds of products, in China.

And we hear now that it's not clear what our administration is going to do about China. And so maybe it has nothing to do with each other. But it is very concerning to me that we would have, in my judgment, a need to be very tough on China in what they have done that has -- we've lost close to 5 million jobs as a result of currency manipulation and related practices in our country, and, you know, a good number of those in my state of Michigan.

And now we have a situation where the president is benefiting by business deals and new trademarks to put his name on businesses and products in China. How -- how do you move forward on that? I mean, does -- how do you make those calculations as to what to do? As you have said, and I appreciate very much and agree with the statements you have made in the past about China being a currency manipulator.

So, what do we do with this?

LIGHTHIZER: Well, Senator, first of all, in the past, it is my judgment that China was a substantial currency manipulator. And I think we've lost a lot of jobs in the United States because of it. And by the way, it's just China. There are other countries that have done it.

STABENOW: I agree.



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STABENOW: And I understand it. I guess my question is, as you move forward in a very tough job, and I believe you are equipped to do that, how do you handle the situation at this point in time where we have business interests in countries, the president, his family, with business interests in countries where we need to be tough on that country in order to protect American jobs?

LIGHTHIZER: Well, Senator, I don't know anything about the president's businesses or anything about trademarks or anything like that.

STABENOW: Would it help you if you did? I mean, in all sincerity, there are proposals, Senator Wyden has one, that would require making that known. If you knew that, would it make it easier to be able to -- from your perspective, do your job and make sure there wasn't a conflict?

LIGHTHIZER: Absolutely not. I don't want to know anything about it. I think that I -- to be honest, with the time I've spent with the president, any suggestion at all that he would do anything that's not in the national interest first, middle and last is just not correct.

I just -- I would like, if I could, to have you and the ranking member, whatever things you have to worry about -- and my job is tough. Your job is tougher, to be honest. Your job is tougher. Your responsibility is greater. This idea that this president would do anything (inaudible) is far out of the realm of possibility. And I say this, and I mean it sincerely. It is an honor for me. This is a person who is completely committed to nothing but helping America and the American workers and farmers and ranchers. It's just...

STABENOW: And I know my time is up and I respect and understand. I would just say he promised on day one that China would be a currency manipulator. It is after day one and that has not happened yet. But other things affecting his business have and that's deeply concerning to me.

LIGHTHIZER: Let me say -- if I could just say, Mr. Chairman, I believe that if your concern is that the president would somehow not defend America against China because of trademarks, I want to let you be assured that that is not the case and I would also say that I'll bet you you and I will sit down in your office between now and the time I leave and you will say, "Bob, you were right. He really is going to change the paradigm on China." I believe he's going to change the paradigm on China.

And if you look at our problems, China is right up there. So let me assure the senator -- let me assure



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ROBERTS: Thank you, Bob, for coming into my office and having a nice visit. Thank you for the work that you have done on this committee. Thank you for your good work on behalf of a Kansas legend, a national legend, Senator Dole.

Last month, members of the Senate Finance Committee met with Mr. Peter Navarro and Mr. Stephen Greenblatt. They are new members of a new White House trade council. They read to us -- read to us the administration's marching orders for trade. They had four goals and 13 policy objectives. Since that meeting, the list has now grown to 24. On this list of goals, agriculture is listed as number three. Given the rough patch that we are in today, given 16-year low in prices and other considerations, I believe it should be number one.

Mr. Chairman, before I ask any question, I would like to submit the administration's list of 24 trade priorities for the record.

I think you have the experience, you know this, most trade agreements I've worked on since I have had the privilege of public service have been overcriticized and they've been oversold. Somewhere in between while we try to work it out. But on this list of 24, there are several I could mention, but the one that really stuck out to me, country of origin labeling. That's a tough issue in the Ag Committee and in the agriculture issue list. But we've been down this road before.

We fixed the issue of cool (ph) in 2015. We don't need to go down that road again. We narrowly escaped about \$4 billion -- somewhere between \$3.5 billion and \$4 billion in retaliatory tariffs against the United States.

I do not think we need a constantly changing list of key elements of a model trade agreement. That may be a good thing to talk about if we had time to talk about it. We don't. What we need is a U.S. trade representative confirmed -- that's you -- and in place who will embark on a robust trade policy -- that's you. You have the experience and you have the talent and you have the commitment.

Now, the U.S. has withdrawn from TPP and the president has expressed major concerns with NAFTA. The administration stated it plans to start to negotiate bilateral trade agreements that you referred to. It seems to me that we need to move very quickly. I want to make it very clear to you and to the administration, agriculture must be a key part of these conversations.



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Now, Last month, as chairman of the Ag Committee, we -- we -- Senator Stabenow and myself chaired a field hearing. We had 21 witnesses. Everyone brought up the issue of trade. Last year, the U.S. exported over \$103 billion in agriculture goods; 2016, agriculture exports accounted for approximately 20 percent of the ag production. Agriculture had a global trade surplus of \$20 billion. Understanding the importance that trade has on the agriculture industry and the rough patch we're in, will you be a champion for agriculture and get commodities moving on the global market?

LIGHTHIZER: Yes, Senator, I will. I have a long history with agriculture. I worked on it when I was a USTR. As the senator knows, I negotiated the Reagan administration grain agreement with the Soviet Union in 1983. You'll all recall that President Carter cut off grain sales to the Soviet Union and President Reagan decided to reimplement those sales and I was called on to negotiate that agreement and did do it.

My 30 or 40-year contact with Senator Dole is some indication. And I had a variety of very memorable meetings with senators. It was a -- it was a joy to go around and meet some of these senators and talk to them about the issues that mattered to them. But I had one very memorable comment that one senator made, which was, "As you go through doing your job, remember that you don't eat steel." And that's something that stuck with me.

So I assure you that we will prioritize steel -- steel. We will prioritize agriculture, both in terms of maintaining what we have and in terms of getting additional market access.

ROBERTS: I can't imagine the senator actually stating that to you. I just can't imagine who that might be.

We've got grain on the ground out in Kansas. If we don't sell agriculture commodities over the next several months, we are at a 16- year low in prices, we will have a problem on our hands. We all will have a problem on our hands. If you are confirmed, can you tell us right now what countries you'll be having conversations with to sell not only what our country makes but also what we grow?

LIGHTHIZER: Well, I think that -- that there are a variety of priorities in terms of what our negotiations are, but it's clear that agriculture would have been a beneficiary of TPP and I think that as we move forward and negotiate new agreements, we have to go to those countries among others. And I would



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ROBERTS: I appreciate that.

My time has expired, Mr. Chairman.

HATCH: Thank you, sir.

Senator Menendez, Senator Cardin was here -- has agreed to allow Senator Toomey, who has to leave, to question. Would you be willing to do that? Senator Toomey, then. Thank you. Thank you for your kindness, I appreciate it.

TOOMEY: Thank -- thank you Mr. Chairman. And I want to thank the senators from Maryland and New Jersey for their kindness, I do appreciate that.

Mr. Lighthizer, welcome and thank you, I enjoyed our chat.

Earlier -- and there's no question, you have a terrific background for this job and great deal of expertise and knowledge. I'd like to focus on -- very briefly on a couple of narrow specific issues and then on a big macro issue that I think is important and that I'm concerned about.

The former is the -- the two primary reasons that I was not able to support TPP and the form that it had. One was the lack of protection for intellectual property of specialty biologics. Incredibly important new field, an area where we need to get this right and intellectual property is a form of property that shouldn't be stolen like any other kind of property.

So I hope we'll do a better job in the future on that. And I would like you to add to your list of Canadian priorities and that is, as I'm sure you know, the Canadians are very resistant to allowing American dairy products. And Pennsylvania is a big dairy producing state and we can do quite well selling dairy products to Canada. So, I'd just ask you to consider that on your list.

The macro thing I would like to address is some worrisome signals that I -- I perceive from the administration. I think Peter Navarro, who's the director of the National Trade Council, has been pretty clear that one of, if not the primary goal of trade policy, is going to be to reduce trade deficits.

Now, if you become the U.S. trade rep, of course you'll be responsible for negotiating the deals that accomplish whatever these goals are. And I'm concerned that this is the wrong top priority. I'm concerned because I don't believe that trade deficits are inherently a serious problem. I think if you



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One, it would invite retaliation. It would almost certainly result in retaliation that would diminish American exports. And that would certainly be very bad for us. Second is, whatever mechanism one uses to reduce imports, whether it's quotas or tariffs or bureaucratic hurdles that foreign exporters can't get over, the net result is fewer choices for American consumers, higher costs, fewer choices, fewer options.

And finally, I would just stress that the fact is, historically trade deficits do not harm manufacturing, broadly speaking and they don't cause unemployment. We've got a chart here that illustrates this point, I think, pretty well. The red line is the line of U.S. manufacturing output adjusted for inflation. And as you can see on the far right, the red line is back up to its all-time high, which is to say, that the United States of America, is manufacturing more today than we ever have in the history of the republic.

Now, we've done it, we do it with fewer people, which is mostly a function of automation, but manufacturing is at an all-time record high. What's even more stunning, though, is that there's no correlation between a reduction in manufacturing and an increase in the trade deficit. In fact, it's the exact opposite.

The blue line, on this graph, as it descends from the upper left, the descent of that blue line reflects increasing deficits. And as you can see, it happens at the same time that manufacturing output is going up. And then when the blue line reverses and the deficit gets smaller, as the blue line goes up, the red line of manufacturing output goes down.

And so there's this pretty consistent inverse relationship, actually, between the size of our trade deficit and manufacturing output. I think it's probably because when the economy is strong, we're manufacturing more. And when the economy is strong we're also buying more products.

TOOMEY: Second chart I want to show, is a similar point with respect to unemployment. Again, you notice that's the exact same blue line. That's the trade deficit line, again. The deficit getting larger as the line goes downward toward the right. And as you can see from the period of 1992 to, you know, roughly, the Recession around 2001, as the trade deficit was growing, the unemployment rate was declining.

And, again, the relationship continues when the trade deficit has diminished as it did significantly in



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HATCH: Thank you, Senator. Your time is up. Senator Menendez.

MENENDEZ: Thank you, Mr. Chairman. Ambassador Lighthizer, congratulations on your nomination.

Let me ask you, I -- I am one who believes that we shouldn't compromise our values in order to get a trade agreement. If anything, we should be using those agreements to further our values internationally.

As you may know when this committee was debating trade promotion authority legislation two years ago, it passed my amendment that barred fast-track procedures for any trade agreement with a country on tier three of the State Department's Trafficking In Persons report, a group of countries that fail to take any action to combat sex trafficking and forced labor. And that was a bipartisan vote on the amendment.

Now, following that amendment, from my view, we saw an unprecedented politicalization (sic) of the TIP report, where countries who were upgraded based on unrelated factors, one of those being trade, in my opinion, instead of their efforts to combat human trafficking. Can you commit to us that if confirmed, you will not take any action to attempt to influence the Trafficking In Persons report?

LIGHTHIZER: Well, I would say, first of all, Senator, I obviously condemn human trafficking. I know you've been involved with this. I know that Senator Cardin has also been involved with it. And -- and it -- it, I believe, will be the strong policy of this administration, although it's not in my area, that it will be the strong policy of this administration to do what they can to stop human trafficking.

In terms of what -- of -- of what priorities I have in -- in negotiating trade deals, I can guarantee that I will work with you and with Senator Cardin and other interested members of the committee to make sure that -- that as we move forward, your -- your specific views on this issue are reflected in those sorts of things. I...

(CROSSTALK)

MENENDEZ: I appreciate that. Let me, since my time is limited and I -- I have several topics I want to... I have a very narrow question. Will you commit to the committee that you will not use your position as the U.S. trade ambassador to try to affect the Trafficking In Persons report?



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MENENDEZ: Well, the reason I asked that question is because the law is clear. We're not supposed to be engaging with a country that's on tier three. So if there's an intention to do so, it would be in violation of the law, unless, again, the report is manipulated to allow a trade agreement to take place, even in the face of human trafficking going on in that country to the level of a tier three, so I would hope that that would not be the case.

I know that the chairman raised India with you, and I want to echo his concerns. I think it's a great opportunity for us to build greater economic ties with India, but I have a real problem with their lack of protection of intellectual property rights, and for the United States, that's a critical element to whether, in the technology field, or in my home state of New Jersey, which is the medicine cabinet to the world in terms of a growing biotech and pharmaceutical industry.

So in that regard, on multiple occasions I have raised the issue of ensuring regulatory protections of biologics in our trade agreements. The Trade Promotion Authority require U.S. trade negotiators to ensure, quote, "that the provisions of any trade agreement governing intellectual property rights reflect a standard of protection similar to that found in the United States under U.S. law."

Such a level of protection enjoys strong bipartisan support from Congress, as our highly innovative biopharmaceutical industry, as well as the broader higher tech industry supports millions of high quality jobs, including hundreds of thousands in my state of New Jersey. Will you ensure that any U.S. free trade agreements meet this trade promotion authority requirement, raising global standards to those of the United States?

LIGHTHIZER: That certainly is -- is -- I'm familiar with the issue, and that certainly is my position. I'll do everything I can to have new trade agreements reflect that standard -- that objective.

MENENDEZ: And I appreciate that answer. And given that the U.S. law provides for 12 years of data protection for biologics, would you commit to pursuing an equivalent level of protection in future trade agreements?

LIGHTHIZER: I've had conversations with several member -- I know that there's a split on this. And -- and I am certainly with the Chairman on this issue, which is to say yes, that would be my objective.

MENENDEZ: And -- and I would just simply say that that's -- in my view, that's in line with what trade



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I know it's a sacrifice, and we thank you very much for being willing to do this. I will comment that we do need a strong USTR to enforce our anti-dumping and to deal with illegal subsidies.

And although you can't eat steal, it does provide good jobs. And if we had more steel jobs, our entire economy would be stronger, including the agricultural sector.

So, I thank you for your efforts on behalf of -- of American steal. And I hope that you'll use that talent to deal with a fair- trading system for all American producers, and manufacturers, and farmers.

I would also point out in that regard -- and I say one other thing, if I might, Mr. -- Mr. Chairman, on a personal basis. Bob's brother, Jim, is here.

And Jim Lighthizer is a distinguished public servant in Maryland, held the office of county executive in Arundel County, one of our largest counties. So, it's a -- it's a family of public service. And it's -- it's wonderful to see his family members here.

HATCH: Well, we certainly welcome the family, every -- every member.

CARDIN: As Senator Portman pointed out, the USTR and our trade laws are a delegation by Congress to your office. And we express ourselves through TPA and we announce several principle negotiating objectives. And we expect the USTR to comply with the delegation and the objectives given to you by Congress.

And let me go over a couple of those. In the most recent trade promotional authority bill, we put as a principle negotiating objective, compliance of anti-corruption commitments. Of course, we were negotiating TPP, we were dealing with countries that are not democratic countries. And we were very concerned about good governance and anti-corruption.

We now have seen a spread of corruption among many countries in the world. Do you commit to carry out the trade promotional authority direction that in trade agreements that will carry out anti-corruption commitments within the trade agreement? Thank you.

We also passed in the trade promotional authority an amendment that was offered by Senator Portman and me as it relates to our European partners. It's called the "anti-BDS provisions", which requires the trade representative to get commitments from our trading partners in Europe that they will not sponsor



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And we've always included in our trade promotional authority, an effort by the USTR to get border adjustment comparable to what our trading partners have on products that enter their market on our products entering their market. The difficulty of course is that we have not harmonized with the international community in the use of a consumption tax.

I've introduced a progressive consumption tax that is patterned after what is accepted internationally as a border-adjusted tax. It's difficult to see us winning too many cases in a WTO with something that is an income tax that we call a consumption tax.

So, I just urge you, in your position, to give a realistic assessment to those of us in Congress as to what is likely to be border adjusted so that long last we can try to set up a level playing field for American manufacturers and producers in the international marketplace as it relates to tax burdens.

LIGHTHIZER: Right, thank you, Senator. Yeah, I -- I have spent a lot -- a lot of time on this issue over the years. I was involved in DISC and FISC and all these things at various times. I don't know what the right answer is, but it is a problem. And my judgment, this -- this equilibrium between direct and indirect taxes. And I don't view it as having any real economic or legal basis. I think it's so un-serindipidous (ph) and -- and unfortunate in the point of the United States. So, I would look forward to work with you (ph).

CARDIN: I appreciate that. Last point I would make, Mr. Chairman, is that we don't do so well in the World Trade Organization on a lot of these legal cases. We haven't done well on border adjustment with the manufacturing credit that you referred to. And I -- I -- I don't know how well we could do on -- on -- on the tax proposal we're talking about.

I do know though, on enforcing our anti-dumping laws, it'll be very helpful in -- in the bilateral agreements, we had specific references to the enforcement of U.S. law in that bilateral rather than relying on a case within the WTO.

So, I would just encourage you, as you do these trade agreements, knowing your reputation for enforcement, that we including enforcement sections in these bilateral agreements.

LIGHTHIZER: I agree completely with you, Senator.



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We need to get in place at the USTR because it's a very important job. And a lot of negotiations coming up. But I've enjoyed working with this agency over the years and respect their unmatched expertise on trade issues.

And as everyone on this committee knows, Congress set negotiating objective for trade agreements when we passed TPA 2015. And it's a very important piece of legislation for getting our trade agreements through the Congress.

So, I'm -- I have just a few questions. And I was told that Senator Roberts touched on -- on -- on part of what I was going to ask.

So, with your many years of experience on trade, I have no doubt that appreciate the requirements in TPA to keep Congress informed on negotiations and the need for agreements to meet negotiating objectives set by Congress that enable agreements now negotiated by this administration to receive a single up or down vote.

Now, following on what Senator Roberts asked you. As you know, I represent a state that has tremendous agricultural productions. Exports are extremely important to Iowa agriculture, whether it be corn, soybeans, cattle or hogs.

The equivalent of one out of every three rows of soybeans, as an example, will end up being exported to -- to China alone. Clearly, these exports are very important to the price of commodities.

President Trump and others in his administration have indicated a desire to modernize and update NAFTA. I'm not opposed to that on the surface but I do have concerns about potential outcomes.

Mexico is the number one market for U.S. corn soybean meal. Mexico and Canada represent the number two and three markets respectfully for U.S. beef. And finally, pork exports to Mexico are twelve times larger today than when NAFTA was implemented.

Could you assure the committee that you and the -- and President Trump's administration fully understand what is at stake for U.S. agriculture in renegotiating NAFTA.

LIGHTHIZER: I -- I do, Senator. Yes.

GRASSLEY: I can't stress enough that there will be real and immediate economic consequences for



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LIGHTHIZER: I don't think that decision has been made at this point, Senator, that the administration has not made a decision whether to update it as a trilateral agreement or to make it two bilateral agreements. We just don't have a position on that.

GRASSLEY: OK. And I noticed in your testimony that you spent time representing U.S. manufacturing opposing non-economic expansion or production capacity around the world, and I've heard a great deal from the U.S. Steel Industry about China's extreme overcapacity for steel production. What do you think is the most effective way that the United States can deal with problems like excess production capacity in any country, but particularly China?

LIGHTHIZER: Well, Senator, this is a very difficult and intractable problem, and it goes beyond steel, right. It's a model that the Chinese use in a lot of different industries. And to me, the answer is one, you have to engage bilaterally and multilaterally wherever you are, and there are a variety of fora where you can engage with the Chinese and try to specifically encourage them to reduce this non-economic capacity, this state-encouraged capacity. I think there are several for a which we can talk about where that's appropriate and where progress can be made.

Then the next thing is you want to make it less economic. It seems to me that's ultimately what it has to come down -- it has to be more difficult for them to maintain non-economic (ph) capacity, and that means enforcing our trade laws. To me, it means encouraging other countries where they could ship product to enforce their trade laws. And then to try to think of more imaginative solutions. The WTO and other places where you can actually bring litigation. But this is a -- the overall theme to me has to be, if a country is creating capacity -- and it's not -- as I say, it could be aluminum (ph), it could be semiconductors, it could be a lot of things for their industrial policy -- we have to take it on head on and go in every direction we can to keep them -- to make it more and more expensive to keep non-economic capacity, which is having this negative effect on the global economy.

GRASSLEY: Thank you, and congratulations on your appointment.

UNKNOWN: Thank you, Senator. Senator -- let's see, let's see, who's next here? Senator Scott.

SCOTT: Thank you, Mr. Chairman. Good to see you again, Ambassador. Just to continue on the same vein that you heard from Senator Grassley as it relates to overcapacity, will be a part of my question



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So it's incredibly important that we continue the conversation that we had around new trade opportunities for our folks in South Carolina, specifically, one of the challenges that we see at home is this conversation about overcapacity and how we deal with it. Specifically, the aluminum and the steel markets are -- it's suggested that there's an overcapacity because of folks who just aren't playing by the rules. How would you continue the conversation that you started with Grassley on how we specifically deal with that issue?

LIGHTHIZER: Thank you, Senator. And I also enjoyed our conversation and look forward to working with you if I'm confirmed, on this and the other issues that you raised, because you raise a variety of issues that were very thoughtful.

To me, the key is to go into -- in the case of steel, we have an actual -- something called the global forum where you can actually sit down with the Chinese and talk about reducing capacity in the steel industry. You also have other places where you interact with them. Enforcing our trade laws, getting other people to enforce their trade laws so that they can't ship uneconomic capacity. I think we have to worry and -- and see if there's some way we can affect what's called upstream dumping or third-party dumping, where they're actually taking economic capacity, putting it into another product, and then shipping that product to us. A good example would be steel where they do (ph).

TIM SCOTT: If you look at the tools at your disposal, if they found the WTO to be ineffective, are there other tools that you need that you would recommend if you affirmed as our trade rep?

LIGHTHIZER: I have some ideas that I'm better off --

SCOTT: Holding onto?

LIGHTHIZER: -- talking to you and talking to the staff, it is a very, very serious problem for our economy --

SCOTT: Yes.

LIGHTHIZER: I don't believe that the WTO is set up to deal with that (inaudible) a country like China and their industrial policy. I just feel it was never really intended to deal with those kinds of situations.

So, we have to use the tools we have and then I think we have to sit down with members and find a



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SCOTT: Where we have a fair trade agreement in place.

LIGHTHIZER: If you analyze the trade gap and the situation with free trade agreements, you have maybe three categories I would say. You have surpluses with Canada, Australia and Singapore. And then you have a bunch of countries where it kind of goes up and down, numbers aren't very large. And then you have Mexico and Korea, and those two are large, deficit countries. So, it kind of varies. With respect to some, it's on that basis been effective and for others it's been less effective.

To me, when I look at deficits, I try to ask myself what does it tell me about the rules of trade as they pertain to that country. Because our objective is not just to get the trade deficit down. Our objective is to get more efficiency in the market, is to get rid of trade barriers everywhere. Everybody wins in the United States – producers really win – to the extent we can break down trade barriers.

So, when I look at FTA deficits, I try to put it into categories and I see what I can learn from this agreement versus that agreement. In some cases, the rules don't seem to be working as well as with others. That's where I try to learn on that.

SCOTT: My time is about up, perhaps my last question will be if you look at the TPP countries, I know that the Administration has been very clear on staying away from multi-lateral agreements, that perhaps we are in a better position to go forward with bi-lateral agreements. Would you envision our country taking a lead in looking for ways to have bi-lateral agreements with some of the partners that would've been a part of TPP?

LIGHTHIZER: Absolutely. Senator, that certainly is my view. I believe it's the view of the Administration. Clearly, we want to have a series of bi-lateral agreements and hopefully ones that take TPP and improve upon what was negotiated, in some cases very well by Ambassador from –

SCOTT: Think it would certainly be an important signal to South Carolina and the many companies that depend on opportunities to continue trade. Thank you.

HATCH: Senator (inaudible) and Senator Carper have allowed Senator Casey to go next.

(INAUDIBLE)

(LAUGHTER)



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I wanted to just preliminarily make a statement about the miners' protection -- the miners healthcare and pension legislation. We know now that we've got coal miners across the country, including many in Pennsylvania, that might be suffering from black lung or cancer or diabetes. They began receiving notices on March 1st that their healthcare would be terminated. In Pennsylvania, that's almost 2,000 miners.

These miners kept their promise, every promise they've ever made to their country, to their family, to their companies. It's time the federal government keeps its promise.

What we're saying on this side of the aisle to Republicans is just get this Miners Protection Act done and that, of course, involves in this case from our point of view making sure that we can get it done now. And that would also, of course, move forward Mr. Lighthizer's nomination, which I think there's broad support for.

Coal miners and their families don't need to spend any additional time, in this case months after month, with the fear and the uncertainty of not having healthcare or the pensions that they earned. So we just hope that the committee, as well as Majority Leader McConnell and the president will join us in this effort to get both done.

Mr. Lighthizer, I'm grateful that you're willing to put yourself for service again. We had a good discussion in my office a couple weeks ago and we're grateful for that discussion.

Just one preliminary question with regard to enforcement. If you're confirmed, will you work to enforce both labor and environmental obligations of trading partners as vigorously as any other obligation?

LIGHTHIZER: Yes, I will, Senator.

CASEY: I appreciate that.

I wanted to spend the remainder of my time on China. Despite promises from China in their WTO ascension, China continues to exercise significant control over both their state-owned enterprises and factors of production. This has traditionally been executed through state subsidization of both manufacturing and exports, like steel and aluminum. Rather than curbing these activities in response to trade cases, China has expanded their reach through new practices that run counter to market



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LIGHTHIZER: Absolutely, Senator. I spent a lot of time thinking about that and I completely agree with you.

CASEY: I appreciate that. And also, what other areas do you think you will be able to work with E.U. with regards to curbing the impact of China's market distorting practices?

LIGHTHIZER: Well, I think we have to engage across the board with the E.U. They're -- they're a potential -- a potential ally on a whole variety of areas, particularly in the -- in the (inaudible) duty area. So I hope to, if confirmed, spend a good deal of time with Europe and with the E.U. and to enlist them in support of the kind of program that you're suggesting.

CASEY: Great. Thanks very much.

I'm yielding back 50 seconds.

HATCH: Thank you, Senator.

Senator Brown.

BROWN: Thank you, Mr. Chairman.

And thank you to Senator Carper too for your always agreeableness. It's the Ohio State diploma that got you there, I'm sure.

Thank you, again, and thank you for the discussion in my office, discussions in the past on trade issues and especially your USTR interview or whatever we call these meetings prior to nomination -- prior to confirmation. You know about the steel overcapacity issue as one of the country's experts in the steel industry and steelworkers. Ohio has lost 4,900 jobs in iron and steel. Last week, we received news that the U.S. Steel plant in Lorain, west of where you grew up on Lake Erie, would permanently idle its number six quench-and-temper facility.

Our steel industry, our steelworkers suffer because our trading partners don't play by the rules. China's state-owned properties have propped up its steel sector and flooded the global market, including our country, with unfairly made steel. The same is true, as you know, in aluminum.

My question is, what does the United States do to get China to implement a net -- a net reduction of its



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We have talked a little bit about this issue of Chinese overcapacity in steel and aluminum and it is something that is -- that is troubling to me, not just because of those products, but because it's a model for the Chinese industrial policy. And to some extent, we have two models of -- two economic models. One is the one that we want (inaudible) and one is a different one, which is one of more state control and state involvement and in many cases it's non-economic.

What I have said is that we have to have kind of a comprehensive approach on this. We have to, one, address in the various fora that we have the Chinese overcapacity issue and push back on that. Some of those discussions have possibilities for -- for -- for results. The global forum would be a good example. Although personally, I don't think that's going to be the only answer. The second thing is really enforcing our own trade laws.

The third thing I suggested is that we get others to enforce their trade laws all with an effort to make the maintaining of uneconomic capacity and the creation of uneconomic capacity, which is in the state (ph) of steel massive. I mean, there's hundreds and hundreds of millions of tons of excess capacity, much more than -- many times the United States total capacity.

And then thirdly, I think we have to sit down and have private discussions where we try to think about what other remedies we have. To me, the objective is to make it uneconomic, to make it expensive, to do something that adds inefficiency in the market and has such a negative effect on the United States, and quite frankly, steel producers in other parts of the world. So it's a multifaceted approach that I would recommend, but I think part of it is going to be sitting down and deciding whether we need new remedies ourselves and what those remedies would be.

BROWN: I know we'd like to work with you to figure that out.

I -- one other question. Two days after the election, I called my longtime friend, Dan DiMicco, who is sitting here but is also -- was (inaudible) the president's trade team then for the transition and talked about TPP and USTR and trade enforcement and renegotiating NAFTA, a whole host of issues, followed up with a letter asking the administration to make it a priority to reset U.S.-China trade relations.

First of all, is that -- should that be a priority in this administration with you as U.S. trade rep? And



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We have to strongly enforce our trade laws. That probably means self-initiating cases. We've done a pretty good job I think in the steel industry under Dan and others' leadership. But I think we have to do it in other products also. And then I think we have to think of more systemic approach. Some of that may be going to the WTO or taking other actions to engage.

I think this president is very focused on this issue. I think his views are -- on this subject are -- I'm just -- I mean, I don't know his views, but I believe they're very close to yours, but in terms of the degree to which this is a problem and how it has to be addressed. So I'm -- I mean, I'm eager to work with this committee and the Ways and Means Committee to find a responsible way to address this problem, this chronic imbalance.

BROWN: Thank you.

Mr. Chairman, thank you.

HATCH: OK.

Senator Carper?

CARPER: Thanks very much.

Welcome. Whenever I pronounce your name, I either want to call you lighthouser or Budweiser. I -- I just...

(LAUGHTER)

I'm torn between the two.

LIGHTHIZER: I will tell you -- I will tell you, Senator, you are not the first person that's had that problem.

CARPER: Whatever (inaudible) call you, we're glad you're here. Thank for -- sounds like your voice isn't as strong as it once was. And we're looking for you to have it be a strong voice to make sure that American exports make their way into markets all over the world.

I -- Senator Brown mentioned that I was an Ohio State graduate. And I was Navy ROTC there. And graduated in '68, right in the middle of the Vietnam war; became a naval flight officer; headed to Southeast Asia, and served about three tours over there with my compadres before coming home.



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The president asked me to go back -- President Obama asked me to go back with him last April; honored to do that. And met with some of the people I actually met with all those years ago in 1991. The president announced when over there that we had decided to sell weapons to the Vietnamese, so they wouldn't have to rely just on the Chinese or just on the Russians.

And the Vietnamese, for their -- themselves, said they'd like to buy a lot of our aircraft, and that they wanted to buy, oh gosh, \$10 billion, \$15 billion worth of aircraft -- passenger aircraft, not weaponry, although they'll probably buy some others that are more defense related.

We have the opportunity to sell a lot of aircraft -- Boeing has the opportunity to sell a lot of aircraft to another country that's -- with whom we've been at odds, and that country is Iran, as you know. And not only does Boeing have an opportunity to sell anywhere from -- I've seen as little as \$8 billion to as much as \$15 billion in product to Iran -- commercial aircraft to replace their badly deteriorated civilian airlines.

But also Airbus has the opportunity to sell another \$10 billion to Iran. And a lot of the components, as you know, for Airbus products are made in America. There's -- all told, I'm told there's enough aircraft that could be sold between Boeing and Airbus to employ tens of thousands of Americans.

And my question of you is is this something we ought to allow to happen? My view, quite frankly, as you might tell, is yes. What is yours?

As long as they -- as long as they continue to abide by the P-5- plus-1 agreement that we struck. Go ahead. Thanks.

LIGHTHIZER: I was going to say, my -- my view is that the way to get rid of trade deficits and to move the economy forward is through exports. I mean, exports, exports, exports. I think that is what we're -- what we're hoping for.

In terms of specific sales of airplanes to specific countries, I don't -- I don't -- I'm not informed enough about what the administration's policy may be. As a general matter, I strongly agree with you. I think we have to -- we have to -- we have to encourage exports. Exports are the key to trade -- exports and enforcement.



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CARPER: But I -- one of the things we talked about was do we need to renegotiate NAFTA all over again, or can we look at the Trans- Pacific Partnership to see what was done in the context of TPP to renegotiate NAFTA. And my suggestion was that we go to school on what Ambassador Froman and his folks worked on, what they accomplished, and see if maybe we can do a shortcut on -- on a NAFTA redo.

Your thoughts, please.

LIGHTHIZER: I -- I agree completely with you on that. I think Ambassador Froman did a remarkable job in a variety of areas, and that we should take advantage of that work. So I'm in total agreement with you on that.

CARPER: Thank you.

If you look -- a lot of people, there's a lot of talk these days about building a wall along our border with Mexico. A lot of people think that folks are coming into the United States are Mexican. They are not. There are actually more Mexicans, as I think you know, that are going back from the U.S. into Mexico than are coming the other way.

NAFTA worked actually pretty well for the Mexicans, I'm told they have a more vibrant middle class than they did 20 years ago. We -- I think Mexico is now maybe out top customer for American poultry in the whole world. And Canada maybe is among the last -- among the worst.

They slapped a tariff -- I think it's something like a 200, 250 percent tariff on poultry; takes away a lot of incentive to try Delmarva chicken when you have that kind of -- that kind of a tariff.

Your thoughts on fixing that kind of imbalance, if we have the chance to renegotiate NAFTA?

LIGHTHIZER: Well, I hadn't realized they had that high a tariff. I -- I agree that it's something we should look at. I'm sympathetic to anything that has potential to lead to -- to more U.S. exports. So, I'm in agreement with the senator. I think it's something that when we sit down with Canada, we should raise that and a variety of other subjects, which have been raised by various members of the committee during the course of this process.

CARPER: All right. Thanks.



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LIGHTHIZER: I appreciate that.

HATCH: You better take him up on that. You know, they don't give very often, the Democrats, you know.

(LAUGHTER)

I take that back. We have a lot of big spenders on this committee.

Senator Cassidy?

CASSIDY: (inaudible). Now, one thing you mentioned -- I think you will know the numbers. I don't quite know them -- is that when we signed NAFTA, we perhaps had a trade surplus of about \$5 billion, and now it's a negative \$60 billion -- I think something along those lines.

I mentioned that to someone and he said part -- and you spoke of the manufacturing jobs that have moved to Mexico. I mentioned that to someone else, and they said, well, the reason some of those car companies moved to Mexico is that Mexico has a trade agreement with both E.U. and the United States that allows goods to move back and forth without tariff; that the United States does not.

And so for some of these vehicles if they were produced in the United States, we could not export them to Europe because there would be a tariff upon them. Again, there is not one in Mexico.

So -- so as we, you know, hopefully move manufacturing back to the United States, which I'm a big fan of, nonetheless it does seem as if it is trade policy in Mexico which is advantage relative to ours that is the driver of that, perhaps not another factor.

Any thoughts on that?

LIGHTHIZER: Well, I certainly think that -- that we have to look at issues like that. I certainly agree with that, Senator. But I suspect that when we do the analysis, the vast majority of the cars that are made by American manufacturers in Mexico will end up right here in the United States.

CASSIDY: So the duality of the market is less than it might seem, because the lion's share is coming here?

LIGHTHIZER: I -- that would be my guess. I haven't studied the issue, but that would be my guess, that



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And my -- and in the one sense, I understand that there's an international market for commodities. But I gather that things -- products, say for example, rice are somewhat advantaged under NAFTA. And so it actually benefits them.

So, what would you say to my rice farmer who is concerned that there will be retaliation and that they will now be competing against Vietnam, which might have a state-owned enterprise selling rice at a discount relative to what our rice producers can do?

LIGHTHIZER: Well, Senator, as we discussed in your office, I -- I hope and believe we can renegotiate NAFTA in a way that -- that helps both countries. And -- and doesn't put agriculture in a precarious position. I realize the anxiety and the concern. And I -- I understand it, but I think that there's a general consensus that NAFTA needs -- needs revision. It's clearly outdated at this point.

And during the course of that negotiation, I think we have to be very careful not to do something that adversely affects those who have been winners during the course of that process.

CASSIDY: Let me ask, the energy portfolio, the energy portion of NAFTA is fairly thin. Back then, there wasn't a lot of cross-border energy trade. There's apparently a lot now, both electrons (sic), gas and oil. Will we just kind of leave that alone? Do no harm? Or do you have any thoughts in particular about what might be done to work out that to each country's mutual advantage?

LIGHTHIZER: Well, I don't have specific thoughts on that point. I would say anything that encourages trade is a good thing, probably for both countries and I would say that at this point we have fairly balance trade on petroleum generally with Mexico, specifically.

So it's part of the agreement we have to focus on, but I don't have specific ideas on negotiating that right now.

CASSIDY: By the way, I'll point out that in Louisiana, they're building a lot of LNG export terminals. I instruct that there are a lot of refiners from elsewhere that are building on the Mississippi, using low-cost natural gas to make a value average, then export.

A quick win for the administration would be just to expedite the production of those LNG export facilities. Multiple benefits, including more jobs here at the wellhead, as well as more construction jobs



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A concern that if we're not careful how we do this, that middle class would suffer, the value of the peso is already falling. Will they continue to be able to afford to buy the goods that we are currently sending?

Any thoughts on that beyond needing to be careful that it doesn't occur?

LIGHTHIZER: I think we have to be careful that it doesn't occur.

(LAUGHTER)

CASSIDY: Thank you, I yield back.

HATCH: Thank you, Senator.

(CROSSTALK)

Senator Thune.

THUNE: Thank you, Mr. Chairman.

I know it's been said many times, many ways, already at this hearing, and there have been several of my colleagues who have talked about it, but when it comes to agricultural trade, you know, I can't emphasize enough representing a state where agriculture is our number one industry.

That agriculture trade must be at or near the top of the trade agenda. In terms of today's agricultural climate, we've got a lot of producers that are counting on tariff reductions and expanding export markets with existing and new trading partners as the only near-term relief for cowering crop and livestock prices that are below production costs.

There's already been some discussion, including with the Senator from Louisiana, about the NAFTA agreement but Canada and Mexico are very important agricultural trading partners. I know you didn't want to get into specifics but I would encourage you, if you can, to get specific on how you intend to improve what's existing under NAFTA.

Do you have a time frame? Do you intend to negotiate separately with the countries or are they going to be all part of one agreement?

Can you be that specific?

LIGHTHIZER: Well Senator, the decision as to whether it should be bilateral or trilateral, really has not



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THUNE: This has been covered already by Senator Wyden, he and I teamed up on some digital trade issues, but that was a top negotiating priority for American diplomats under the TPP and I hope that will continue to be a very high priority.

Coming back to Ag for a minute, helping our companies expand their ability to compete and tap into foreign markets, as I said earlier, is very critical. As those companies make investments in products that can enjoy greater global consumption, it is essential that our competitors not be permitted to plant roadblocks in their way.

For instance, in the past few years the European Union has been using its trade agreements to misuse the concept of geographical indications by erecting de-facto non-tariff trade barriers to U.S. products made in South Dakota such as parmesan and asiago cheese.

How do you see yourself shaping the United States approach to foreign policies like this, that are intentionally aimed at promoting global rules aimed at choking off competition of U.S. companies around the world?

LIGHTHIZER: Well, I'm very familiar with the issue and it seems to me it's an organized effort on behalf of the European Union and I think we -- we have to take it head on. We want to discourage other countries from -- from agreeing to this -- these geographic indicators and resist them in the United States.

The issue tends to be more what happens in third party markets. So it's a little more complicated to get into it, but we are aware of it. It will certainly be something that we'll -- we'll work on. And we realize it's a serious problem.

THUNE: We've seen also a disturbing trend in recent years, where by, some our trading partners have ignored their international commits, particularly with respect to intellectual property protection, either by failing to fully implement agreements or by flouting the rules in order to give their businesses an unfair advantages. These decisions are shortsighted and ultimately, discourage innovation investment and job growth.

What can your agency do to ensure that our trading partners are enforcing existing commitments and to deter countries from weakening such standards in their own IP regimes?



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THUNE: Mr. Chairman, I think that's all I have. I appreciate your time. And Mr. Lighthizer, again, I can't emphasize enough the importance of agriculture. And as you start looking at these, what we're going to do in the place of TPP and how you're going to approach NAFTA. I hope you'll keep that a very, very high priority.

LIGHTHIZER: Thank you, sir. I will.

HATCH: Thank you, Senator.

Senator Bennett is next and then Senator Cantwell.

Senator Cantwell.

CANTWELL: Thank you, thank you Senator (inaudible).

Mr. Lighthizer, thank you for being here. Congratulations on your nomination.

Since I know that you're a former -- well familiar with this committee, I can throw a lot at you at once if I could, so thank you. One, I want to know whether you support the export-import bank and the concept of credit agency for the United States. And whether the president should immediately appoint people to get it functioning at the level it should.

Number two, will you be aggressive in getting Europeans to stop massively subsidizing Airbus, you know that the WTO, has found that the airport -- air space sector, \$17 billion of illegal subsidies. That brings the total of illegal European subsidies to airbus to about \$22 billion. So I want to know if you're going to be aggressive on that.

Our colleagues here in the trade facilitation and Trade Enforcement Act, included an authorization for \$15 million in trade enforcement trust funds and that was about making sure that we had ample -- ample support within USTR to actually fight for trade enforcement.

I believe in an economy outside the United States selling U.S. products. In fact, I was very happy the last administration had a goal of doubling exports. But I know that we also need to have the personnel. So do you support the trade enforcement trust fund and what should its annual appropriations be so that we are adequately staffed?

And I'd like to ask you to look at the trade enforcement trust fund and the trade enforcement trust fund.



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LIGHTHIZER: Well, he's kind. I would say, first of all, in terms of -- just to start from the bottom perhaps, in terms of the relationship between the White House, the Commerce Department and USTR. I fully expect to have the full statutory authority that Congress provides. And I fully expect to work in a collaborative way with -- with Secretary Ross, who I admire and I think is very, very talented in this area and the White House.

Now, the White House is defined, as -- as Peter Navarro and other people. I mean there's Gary Cohen and others. In all my experience in -- with one administration after another, there are almost always, sort of three sources of kind of influence in the trade policy. And the job of the USTR really historically is to sort it out. That's why --

CANTWELL: So you're the lead in sorting that out, more or less.

LIGHTHIZER: That's correct. I mean, historically that's why -- John Kennedy started the agency, along with the Senate Finance -- the Ways and Means Committee in 1962. So, I expect it to work the way it ways. I think they're very cooperative and I look forward to working with all the parties on that. And in particular, with working with this committee and with the Ways and Means Committee.

In terms of the Trust Fund, yes, I hope the appropriations -- I hope the \$15 million appropriated in terms of resources generally, I'm not now in the Administration, so I can say that yes, we need more resources for sure --

CANTWELL: Thank you.

LIGHTHIZER: The agenda is substantial.

CANTWELL: You know, some of my colleagues wanted it mandatory. I just want us to put the money there. I want to have more people in trade enforcement than are in sitting in (this by us) and right now, we don't have a lot. So, I'm glad you're committing to 15 million, thank you.

LIGHTHIZER: Thank you, Senator. In terms of Airbus subsidiaries, yes, I will be aggressive. I realize that's a problem, I've followed the issue for a long time and I've never really litigated or involved with it, but it's a serious problem. It's one that's gone on and on and on and it has a real impact on American manufacturing.



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LIGHTHIZER: I think we have to do everything we can to encourage exports. Having said that, the exporting-import bank is a sensitive issue and I – it's not an issue that I've worked in personally.

CANTWELL: Could you just define sensitive since I'm running out of time?

LIGHTHIZER: Well, I think I define sensitive is people who are strong for it and people who are strong against it. Normally in those cases when I'm not informed and realize that the Administration will make a policy, I'm probably better off waiting for the Administration before --

CANTWELL: I would just say that there is a very small group who is politically motivated and may be loud, but when you allow the United States Senate to vote on it, both majorities and the House and Senate have supported it and majorities of republicans have supported it. So, the notion that somehow it doesn't have major support, it's more just being held hostage by some political agenda. I hope you'll be loud about this as a credit agency strategy, because to me, we'll lose U.S. manufacturing.

If Boeing can put Rolls-Royce engines on a plane and get credit financing in Europe, how's that helping GE? And so, while other agencies and an international basis are going to be aggressive about this, we need to get the right strategy here. It can be a discussion about how we make sure we're not doing anything to distort the market. But I think the Administration has got realistic. You can't go stand in front of a Boeing plane in South Carolina and then not have a functioning import-export bank. So, I hope we can get there.

HATCH: Thank you, Senator. Senator Bennet.

MICHAEL BENNET: Thank you, Mr. Chairman. I thank you and the Ranking Member for having this hearing. Thank you, Mr. Lighthizer, it's nice to see you again.

I just wanted to underscore what the Senator from Washington ended with. I think you'll find her diagnosis or description of the politics that are in this are probably dead on. I also want to say Mr. Chairman that I look forward to working with you and the Ranking Member to figure out a bipartisan way through this wavier process, it's needed. I want to also mention -- I know you've covered this ground and I know I'm the last one and I can -- I'm sure you're ready to be done.

So, I won't ask you a question about steel but I do want to just observe as my colleagues have, that



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I want to get one question on NAFTA before you go. As you know and you've talked about today, the Administration throughout the campaign signaled that it intended to renegotiate NAFTA. This is very important to my state because it's the second largest export market for the state of Colorado and it's particularly interesting and important to my farmers and ranchers. Colorado as an agriculture community depends heavily on exports, to NAFTA countries.

For example, last year, Colorado exported more than \$486 million in beef, pork and lamb to Canada and Mexico. Canada and Mexico alone accounted for a third of Colorado's beef exports. Agricultural producers in Colorado are worried. They're interested and curious about this reopening, but they're worried that opening up NAFTA will lead Mexico and Canada to impose higher tariffs and that the flow of goods will be physically stalled by the negotiations.

They're also worried that negotiating NAFTA will limit important market access that the United States currently enjoys notwithstanding the political conversation that we have had in this country.

And I wonder if you could finish today by responding to that a little bit and also talking as you did or distinguishing as you did when we met in my office between your views and the president's views on the manufacturing side of things with respect to trade and your views and his views with respect to the importance of trade for agriculture in this country.

LIGHTHIZER: (OFF-MIKE)

BENNET: OK. Well, then just speak for yourself.

LIGHTHIZER: I think that -- that we have to do something for manufacturing. We have a huge manufacturing trade deficit and I think we have to do something. And there are a variety of things in the NAFTA framework that need updating and I think those things will tend to help manufacturing.

And then your position, which I think is equally valid, is that agriculture has done pretty well under NAFTA and that's true in a variety of different agricultural products and we have to be careful not to lose what we gained, and that is a balance. I think something has to be done. I think we can actually accomplish that. I think we can -- we are very important to Mexico also. And I realize they have other options, but a huge percentage of their -- of their exports come to the United States.



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The United States and Mexico both need each other economically a lot and having an agreement that's 20-some years out of date -- it doesn't even have a digital chapter in it because there was no need for that in those days -- I think that's something that we can do in a way that helps both of us and doesn't risk damage to our agriculture sector which is also very, very important.

BENNET: I appreciate that answer. I'd say that even in the act of negotiation, we're gonna have to take care to make sure that the current markets continue to be open in the way that they have been. And I know you appreciate that.

Mr. Chairman, I'll yield back the balance of my time. Thank you for the hearing.

HATCH: Thank you, Senator.

My partner on the committee has one more question to ask. Senator Wyden?

WYDEN: Let me -- let me, if I might, go into this resources for enforcement issue just a little bit deeper. Mr. Lighthizer, isn't cutting enforcement resources an invitation to foreigners to cheat our workers and businesses? Seems like a simple question.

LIGHTHIZER: Seems like kind of a trap question.

(LAUGHTER)

WYDEN: It relates....

(UNKNOWN): You think?

WYDEN: It relates to the second question.

LIGHTHIZER: I'm just asking myself, if it's a trap, I should probably think about it.

(LAUGHTER)

WYDEN: Well, it is a substantive question because it relates to the real world. We keep battling for these resources. I've already told you, I very much enjoyed our conversation and I think you have a lot of talent. But I'd like an answer to the question because it relates to what's ahead.

LIGHTHIZER: Senator, I think USTR needs more resources.



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WYDEN: I think that again, the point is, these are questions that bump up against the realities that senators are talking about. For example, one of the things I was struck by, I think we talked about it in the office, that on this question of finally getting a fair shake for our timber workers and our mills, we've got a situation where the hiring freeze is making it very hard for them to get all the data that they need in the provinces of Canada. So I'm just going to operate under the assumption that you're going to fight with all of your energy and considerable talent to make sure you get the resources and we'll leave that there.

Since it's the end of the hearing, I just come back to this point that, in my state, one out of five jobs revolves around international trade and I think the premiere economic issue of our time is how we get wages up for people. How do we we increase wages? And so many of the trade jobs have that added value, added component. They reflect a higher level of productivity because we're trying to get the products into tough global markets.

So I think to have you, as you said today, indicate you'll be part of a full court press on enforcement and that you'll play offense in terms of creating opportunities for our companies and our workers overseas is an appropriate way to end this.

Mr. Chairman, I have unanimous consent requests to put two documents in with respect to this disclosure issue. We have a bipartisan disclosure memo on the nominee that has been done by the committee and then I would like to enter into the record -- ask unanimous consent to enter into the record an agreement between Mr. Lighthizer and the government of Brazil in which he represented sugar and alcohol.

HATCH: Without objection.

WYDEN: Thank you.

Mr. Lighthizer, we look forward to continuing the conversation in the days ahead and thank you for your time today.

Thank you, Mr. Chairman.

HATCH: Thank you.



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Before I adjourn, I just want to note that we'll have the customary quick turnaround time for written questions for Cabinet-level nominations. I'll ask senators to submit all their questions by 6:00 p.m. tomorrow evening.

With that, the committee will be in recess.

END

Mar 14, 2017 17:52 ET .EOF

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January 19, 2017

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SEN. ORRIN G. HATCH

CHAIRMAN

SENATE COMMITTEE ON FINANCE

WASHINGTON, D.C.

SEN. ORRIN G. HATCH HOLDS A HEARING ON THE NOMINATION OF STEVE
MNUCHIN TO BE SECRETARY OF THE TREASURY, AFTERNOON SESSION

Roll Call, Inc.

1255 22nd Street N.W.

Washington, D.C. 20037

Transcript/Programming: Tel. 301-731-1728

Sales: Tel. 202-419-8500 ext 599

sales@cqrollcall.com

www.cqrollcall.com

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SENATE COMMITTEE ON FINANCE HOLDS A HEARING ON THE
NOMINATION OF STEVE MNUCHIN TO BE SECRETARY OF THE
TREASURY, AFTERNOON SESSION

JANUARY 19, 2017

SPEAKERS:

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SEN. CLAIRE MCCASKILL, D-MO.

WITNESSES:

REP. KEVIN MCCARTHY, R-CALIF.,

HOUSE MAJORITY LEADER

REP. JEB HENSARLING, R-TEXAS

STEVE MNUCHIN,

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NOMINATED TO BE SECRETARY OF THE TREASURY

HATCH: Second round, and we're going to do that. And — but I hope people will — will help us to move this along. So I'll reserve any comments that I have to make. Senator Wyden,

WYDEN: Thank you very much. Let's go back to the Mnuchin rule, if we could, Mr. Mnuchin. Let's say Congress proposed a policy that cut payroll and investment taxes for the top one or two percent of Americans, while eliminating tax credits for those with low or middle incomes. That sure looks to me like what we agree is going to be called "The Mnuchin Rule": no tax break, absolute tax break for wealthy. Do you agree with that?

MNUCHIN: So, again, I think we want to work on bipartisan tax reform.

(CROSSTALK)

WYDEN: That's very specific, and I'm asking it for a reason. I don't want to have to repeat it. If you have a policy that cuts payroll investment for the top one or two percent, while eliminating the credits for those who are low and middle income, doesn't that violate the Mnuchin Rule?

MNUCHIN: Again, I think is to we need to look at the overall tax plan, OK? And as I said, the primary objective is to deliver a middle-income tax cut and tax simplification on — on the high end. That's our objective.

WYDEN: Oh, you're — you are already fudging on this commitment that you made to the American people, that you wouldn't give an absolute tax break to well-to-do people. And the reason I'm asking this is because this is exactly what ACA repeal was all about in the last Congress, and every single Republican up here voted for it.

So I hope you'll think this over, but this is exactly what troubles me. We've got two tax systems in America. You are nudging our way saying maybe you wouldn't give a break to the well-to-do. I'm asking you about a specific situation. You said, "Gee, I don't know. We'll have to go and see."

Now, let me turn to a second area that working-class people care a lot about, and it involves their purchasing power. There are a lot of questions about the 35 to 45 percent border tax that the president-elect is doing a fair amount of Tweeting about. Could you tell the American people what products would be subject to this tax? And I'm not interested now in all the complicated theories about the dollar. I think it's a question worth talking about and the like.

But Americans want to know what products would be subject to it. Working class people want to know, is gas is going to be part of this? I mean, give me your response to this. Are there any products that are going to be exempt?

MNUCHIN: Well, first of all, thank you, and I think that's a — that's an important issue, and I think that this week the president-elect came out and suggested that he had concerns about the House GOP order-adjusted tax, and part of it is the complexities around it, and part of it is the ...

(CROSSTALK)

WYDEN: I'm not talking about what the House is doing with border adjustment. I want to hear ...

(CROSSTALK)

MNUCHIN: He didn't ...

WYDEN: ... about the border tax the president (sic) has been talking about.

MNUCHIN: He — he hasn't suggested a border tax. What he's suggested is that for certain companies that move jobs, OK, that there may be repercussions to that. He has not suggested in any way an across-the-board 35 percent border tax. And if anything, quite the contrary. As you said, he has concerns about things that impact the price of gasoline and — and others.

WYDEN: So what products would be off the table for purposes of what I call a border tax, and you want to say is kind of something else? What — what products that working class people buy would be exempt?

MNUCHIN: Again, I think when he's referred to a border tax, OK, he's referred to a small number of companies that have moved their jobs, or are moving their jobs, putting products back into the United States, and taxing them. So he has in no way contemplated a broad 35 percent border tax. That couldn't be further from anything that he'd possibly consider.

WYDEN: Let me turn to another topic of tax policy, because we're trying to gather at least a bit of information about how you would deal with some of these kind of common tools that would be in your jurisdiction, if confirmed as treasury secretary.

Now, inequality has grown substantially over the last 30 years. There has been bipartisan support in the past for the earned income tax credit. There are a number of proposals pending now in the Congress. Do you have any thoughts on that?

MNUCHIN: Again, first of all, as I suggested to you when we met, I — I hope we can sit down and talk about taxes with Democrats and Republicans, and see where we can agree on bipartisan solutions.

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I think as — as it relates to any specific component of this, I think we need to look at the overall tax reform that we're going to put through, and — and where things fit in it. But I would welcome the opportunity to — to follow up with you and work on that.

WYDEN: Mr. Mnuchin, again, and I — I want to be respectful on this point. Because you have not been involved in these policy fields in the past ... And I respect that, because there's lots of leadership that a person still can provide. When I asked about Medicare, you'd be the managing trustee. You really didn't have any thoughts on that.

I just asked about the earned income tax credit. Tremendous interest among Democrats and Republicans. I — I gather you're not aware that the speaker has long been advocating some improvements that Democrats are interested in. And I will tell you, we're going to have, I guess, the chance to go into some other questions.

I'm very troubled about the fact that on these basic tools that you would have, if confirmed, you seem almost unscathed by the subject. So thank you, Mr. Chairman.

MNUCHIN: Well, I'm — I'm — I'm sure that you're troubled by that. I — I hope I earn your support and respect that you aren't troubled going forward if I'm confirmed.

It's not that, again, on the earned income tax credit, I don't want to comment on specific legislation on tax. I think that tax reform needs to be looked at as an overall policy, and I've laid out certain framework for what I believe the president-elect believes in for tax reform without commenting on specifics.

WYDEN: I — I'm — I'm over my time for — for — for this round. I hope, because I'm interested in those discussions with you about tax reform, you're not talking about putting the earned income tax credit on the table as something you might throw in the trash can. Because if you do, you're going to have opposition from me, and you're going to have opposition from the speaker of the house. Thank you.

MNUCHIN: I'm — I'm not suggesting that. I was just saying I wasn't going into the specifics of every single tax item. Thank you.

HATCH: OK, Senator Crapo.

CRAPO: Thank you, Senator Hatch. Mr. Mnuchin, I want to try to cover three quick, maybe not so quick questions.

The first one is to return back to the discussion you were having with Senator Warner about Fannie Mae and Freddie Mac, and GSE reform, housing policy reform.

I'm sure you're aware that Senator Warner and I, and a number of other senators on the banking committee have worked for some time on legislation to try to deal with this circumstance. We currently have a situation in which Fannie Mae and Freddie Mac are in receivership. The Federal government, basically, is running them.

And the concern that I believe Senator Warner was referencing was a concern that the administration, not — not because we are afraid of anything. Just because we're asking. We're trying to find out — that the administration may either believe that it's OK to keep them in receivership, and just continue to run as is, with the status quo, or perhaps, to simply recapitalize them, and put them back out into the market without any housing reforms.

And I just wanted to ask you if you would — would ... I realize you can't comment on a specific plan yet, but if you would comment on the fact as to — to whether you believe that we need to have reform in our housing finance — or, our housing finance policies that would go further than simply recapitalizing Fannie and Freddie, or keeping them in the receivership.

MNUCHIN: OK, well, again, thank you for that. And I would comment, unlike the Medicare fund, where I acknowledge I'm not an expert, I think on Fannie Mae and Freddie Mac, I am an expert. I've been around these for 30 years. I understand these very well, and that's why it — it would be one of my priorities to work with you.

And as I've said, what I am focused on is we need housing reform and a solution. So I start with the standpoint of, the status quo is not acceptable, of just leaving them there.

(CROSSTALK)

CRAPO: I appreciate that.

MNUCHIN: I think, as you know, and we've discussed, there — there are two extremes on this, and it's something that I look forward to sitting down and — and talking to you with.

But I believe we need housing reform, and we need to make sure that whatever the outcome is on the two extremes, that: one, we don't put the taxpayers at risk; and two, we don't eliminate capital for the housing market. So I'm very concerned that middle income people, and — and moderate income people who need mortgage loans have access to that capital.

CRAPO: Well, I appreciate, in fact, I agree with you on both of those objectives, and I think that's exactly what we need to work together to identify.

MNUCHIN: Good, well, I'm optimistic we can work together, and hopefully, figure out a bipartisan solution. Thank you.

CRAPO: Thank you.

My second question is — you've already answered it, but I just want to raise it again because it's so important, and that is, we've seen the unfortunate circumstance, in my opinion, in the last few years of the IRS actually targeting individuals because of what they believe, and how they advocate in our society. And you've already talked about this, but I would just encourage you to make a high priority that not only the IRS, but all of the federal functions under your jurisdiction as secretary of treasury, which I'm sure you will be confirmed to be, are stopped from that kind of

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targeting of American citizens who are conducting perfectly legal business, and engaging in perfectly free and legal speech.

MNUCHIN: You have my 100 percent assurance that I will do that. I think there's no place in the not only the Treasury, but in other agencies for us to be having people act that way.

CRAPO: All right, thank you. Then my last question in this round would be, back to the tax issue, one of the big issues that I think we must grapple with, and I would just like your ideas on it, is that, as — as I'm sure you know, a — a huge percentage, in fact, a significant majority of the business entities in the United States pay tax through the individual income side of the code, rather than the corporate side of the code.

And as we reform, as we should, our corporate code, and engage in individual tax code reforms, I'm concerned that we don't end up with a significant bifurcation between different business entities in the United States as to the tax burden and the tax rates that they pay. Could you comment on that?

MNUCHIN: Sure, and — and — and I — and I, too, think that's an — an important issue.

And again, let me just, you know ... For — for large companies that are in pass-through form today, the reason why large companies are in pass-through form is because they look at the personal income tax rate, and they compare it to the corporate rate, and the dividend rate.

So I think for many large companies that are structured as pass-throughs, they will opt to take the business tax, and we will figure out a simple, non-bureaucratic, you check the box[00:05:00], you get the business tax, you leave the money in the company, you grow your company, you get the lower business tax. If you distribute it out, you pay dividends. And I think that that's something that's critical.

And as I've said, we'll make sure that we work with Congress to make sure we close the loopholes, so rich people don't use this as a way to get lower business tax. And on the other end, we will make sure that small businesses are protected as well, legitimate small businesses.

CRAPO: So the small businesses don't pay an incrementally higher tax just because they choose not to engage in the corporate form?

MNUCHIN: Correct. And as some of the things that we look forward to working with you on the details and how we can make sure that's preserved.

CRAPO: Alright, thank you very much. Thank you, Mr. Chairman.

HATCH: Thank you, senator. Senator Nelson?

NELSON: Thank you, Mr. Chairman. Mr. Mnuchin, you no doubt are aware that one of the things as Treasury Secretary, you will have to face is the multi-employer pension funds that are in dire straits. These are ones that have become unstable and their once pension plans for people like truck drivers and carpenters and miners.

And the Treasury Secretary has the authority to temporarily or permanently reduce the pension benefits if the plan is projected to run out of money. Therein, there are two bad outcomes. One it's running out of money, and you are going to be faced with the problem of what to do about it. These are folks that are living on the edge; and a reduction of the pension is going to mean something that they have to go without.

What do you think about this and how would you approach this heart wrenching issue?

MNUCHIN: Well, I appreciate your concern and we had the opportunity to talk a little bit about this when we meet and I believe your office followed up and sent me some information on this.

So, it's something that I look forward to working with you on. And let me first say, I think the people who have worked very long periods of time and have built up a pension deserve to get their pension, that is very important.

On the other hand, we have to be careful that on the other extreme we don't have a bailout of the entire pension industry and bankrupt the guaranty fund. But I commit to work with your office, I understand these issues, I understand the sensitivity of these issues and I share your concerns that cutting truck drivers' pensions and other people's is a very significant outcome and we should go to great lengths to figure out if there is other solutions before we do that.

NELSON: Since folks like you and me have been blessed, we haven't often had to walk in the shoes of folks like that that are living on the edge.

MNUCHIN: I completely understand.

NELSON: And I ask that in your position with this awesome authority as Treasury Secretary that you put yourself in those shoes. Another financial disaster is what's happening in Puerto Rico, not only because of what they are at fault about, but also in the unequal way that they have been treated by the law — quirks in the law that I do not understand how they ever got that way.

They are not treated the same on bankruptcy laws, they are not treated the same on Medicare and Medicaid laws, and they have a particularly tragic situation where they were given a block grant of Medicaid money, that's running out this year; while at the same time one-third of the island's residents are infected with Zika. And we know that 15 percent of those infected with Zika, if they are pregnant, there is a 15 percent chance that they are going to have a deformed child.

I would like very much for you to keep that in mind because we've got to come up with a plan. Now, I know a lot of responsibility is on us in the Congress. The Chairman led an effort and we

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tried to get some things passed in December. But the big things like Medicaid are coming up in the future.

MNUCHIN: Senator, first of all, thank you for going through that. And when I did have the opportunity to meet with Secretary Lou and talk about certain issues that he wanted to advise me on and bring to my attention that he thought I'd have to deal with in the near future, Puerto Rico was high on that list.

So I must say I wasn't an expert on Puerto Rico before the last 30 days; I've started studying this issue, I share your concerns, I'm glad that the commission was established. I think that — I understand that the Treasury has been staffing the commission.

I have someone who I've already asked internally who is going to be working with me to start working on and get debriefed by the Treasury Staff on this and this is going to something that we need to figure out a bipartisan solution. I'm hoping that it can be done in the context of the commission but I look forward to working with you on.

NELSON: Thank you, Mr. Chairman.

HATCH: OK, Senator Menendez?

MENENDEZ: Thank you, Mr. Chairman. Mr. Mnuchin, I've listened to your responses to my colleagues defending one west is more than 50,000 foreclosures on your watch. And I understand you bought a bad book of loans. And I don't think we're saying that you had to save every single homeowner, but by taking the FDICs back stop, you had an obligation to at least try.

So do you believe that you made every effort to prevent foreclosures and keep families in their homes?

MNUCHIN: I do. And I actually brought with me which if you want to make part of the record; the FDIC asked the Inspector General, the OIG to come in and look at the loan modification program.

MENENDEZ: So you believe you did?

MNUCHIN: And they independently reviewed that and that was verified by the OIG.

MENENDEZ: Well, I don't know that their determination is that you made every effort. Let me just say...

HATCH: Excuse me, without objection we'll make that part of the record.

MNUCHIN: Thank you.

MENENDEZ: What about one of your Vice Presidents actually admitting to Robo-signing (ph) 750 foreclosure documents a week without even reading or reviewing them? How can that be considered making every effort to prevent foreclosures?

Can you honestly say your bank made every effort to keep families and seniors in their homes when they were Robo-signing (ph) one foreclosure document every three minutes?

MNUCHIN: So Senator, yes, I can absolutely say that we made every effort. And again, our loan modification programs were audited by the Treasury, the FDIC, the OCC, you can imagine as being a private equity person who bought a bank, we lived in a glass house and we were constantly viewed by the regulators.

Now the comment that you're making, there was an industry issue which had nothing to do with loan modifications; which had to do around the processing of foreclosures; that was the procedure that was started at Indy-Mac (ph), it will continue under the FDIC ownership. And in the beginning of our ownership, we unfortunately didn't change certain procedures; as I've said, the industry — it was solved, OK...

MENENDEZ: I'm not worried about the industry, I'm worried about what your direction of your bank that you keep referring to entities; the office of supervision hit you with a consent order because you were actually putting homeowners on a fast-track to foreclosure, and that was part of that 750 foreclosures a month.

You also had an independent government audit of one west foreclosures in 2009 and 2010 that alone identified more than 10,000 homeowners who were owed \$8.5 million in damages. And among those homeowners were 54 incidents over the course of just two years where the bank violated the rights of active duty military servicemen and women, those defending our country across the globe under the Service Members Civil Relief Act.

So if you did all of that, how is it that you feel that you can honestly say here in sworn testimony that your company did everything?

MNUCHIN: OK, so first of all, Senator and I appreciate the issue and as I said before, we highly regret the extent that we made even one error, whether especially to the servicemen. And yes, we had all those loans reviewed, we paid \$8 million; many, many firms paid billions and billions of dollars but will regret any issue there.

What you are referring to with the OTS and the independent foreclosure view, it was one and the same. So as I've referenced in my testimony, we were one of 14 banks that signed a consent order. Basically the 14 largest servicers signed consent orders, at the time we were under the OTS, it was later taken over by the OCC who took over the consent order and we were the only bank that actually completed that independent foreclosure review and we are proud of that.

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MENENDEZ: And the fact that it was completed at the end of the day ultimately showed that your company took people out of their homes and created consequences for them they should not have had. So I'm not sure which ones is to be proud of. Do you know a woman named Sylvia Oliver?

MNUCHIN: I do not.

MENENDEZ: I didn't think so. She is from Scot Plains (ph), New Jersey. She is the sister of the immediate past speaker of the New Jersey General Assembly. She received a loan from Indy-Mac (ph) in 2008 and after her employer cut her hours, she ran into difficulty paying for her mortgage.

She wanted to be a good borrower, she tried eight times for loan modifications which I believe she would have qualified; every time your bank denied each and every one. She has been fighting to save her home for seven years. She nearly lost her home yesterday. Thanks to her tenacity, she has a 30-day reprieve but that's no guarantee she won't lose her home next week.

So I look at her and Mr. Chairman, I'd like to have the testimony of several individuals who face these realities be included in the record at this time.

MNUCHIN: Well, without objection if they are — if they pretend to the record...

MENENDEZ: They certainly pertain to the record. They pertain to having been foreclosed on and ultimately having try to seek loan modifications unsuccessfully even though they should have qualified for them. And I think they are more than eligible for the record.

So let me just say in closing, I see this as an example of privatizing profits with socializing losses. In the darkest days of the financial crisis, it seems to me that you and your friends were looking for stores to raid and you found IndyMac. And with the government subsidizing the risk, you engineered a highly lucrative equation that made billions on the backs of homeowners, seniors, minorities, military men and women.

And so I have a problem understanding how does that create confidence in the Secretary of the Treasury Nominee when you have to be looking out for every American. And it didn't seem that when you had the chance to do that — and even the incentive I would argue by the back stop that the FDIC gave you and over \$400 million that your company took from Hamp (ph) which I know you were disparaging before, that was your drive.

So I need to be convinced, that's going to be your drive now that you are the Nominee for the Treasury Secretary that's supposed to represent all Americans.

MNUCHIN: Well, Senator I hope I have the opportunity to convince you going forward. And I apologize because I didn't recognize the name. But now that you have mentioned to me it's been postponed and I don't know any of the specifics. But as a curtesy, CIT did inform me that your office had requested an extension and they did honour that and given extension to revisit that.

And I'm not involved in CIT anymore but I would encourage you to make sure that you have — again, if there is complaints, there is a department within the bank that responds to this. As I said earlier, any complaints that came through any government or regulatory agencies were responded to very carefully, and reviewed by the OCC.

And again, I would just apologize to the extent there were any errors whatsoever, that is something that I'm very sorry for but having said that, we took over a mortgage servicing business that was not part of what we were trying to build; it was a mess when we got there, we fixed it and cleaned it up, and to the extent that we made errors or issues, we compensated people for that as part of the agreement that we entered into the regulators which we think is the right thing to do.

HATCH: Senator Carper?

CARPER: Thanks, Mr. Chairman, Mr. Mnuchin. I know you've introduced your dad earlier, he is still sitting here behind you. How old is your father? How old is he?

MNUCHIN: 83. He is 83.

CARPER: You're blessed to have him with you.

MNUCHIN: Thank you. I feel that way.

CARPER: He looks pretty good for 83 as I can say and I'm in a position to say that. I'm glad you said that, that is true. My parents are both deceased. A couple of things they used to say to my sister and me when we were growing up over and over again. I don't know if your parents ever did that hoping they would somehow sink in.

One of the things that I see is they've got the right thing to do, not the easy thing, it was the right thing to do, just do it. And they said treat other people the way we wanted to be treated, golden rule. My dad was always big on doing things (inaudible) doing everything well (inaudible) if it isn't perfect, make it better. And my dad always used to say just use some common sense. He said it to my sister and me a lot. We must not have had any.

But can you just think of a word of advice that your dad or maybe your mom have given you over the years, that — that you could have used or should have used with respect to the foreclosure — the foreclosures that you were facing and what you did? Just very briefly, what's a word of advice from them.

MNUCHIN: Well, again, first of all, thank you. I agree with those many things that you were told. And as I mentioned, not only has my father had a big influence on me, but my mother, who has passed away, and my grandparents, and understanding the importance of hard work.

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Again, I can tell you...

CARPER: Give me one — just one good thing that your mom or dad did that applies to what guided you in this mortgage foreclosure.

MNUCHIN: Absolutely. I think kind of, as you've suggested, that treat people as you'd want to be treated; be sympathetic; be empathetic to those people; and understand what they're going through.

CARPER: Good.

The other thing I would add to that, everything I do I know I can do better. And I think you've acknowledged that as well.

MNUCHIN: Absolutely.

CARPER: It sounds like you guys tried, but (inaudible) always do — we can always do better.

I want to go back to the issue of how to create a nurturing environment for job creation, job preservation, with respect to growing exports. You know, making sure that we get our products to markets across the world.

The president-elect has I think several times, at least I've heard him, talk about support for a duty on items that are imported from China. I think it's like 45 percent; 35 percent duty on items important from Mexico. I think he may have also considered an executive order imposing a 5 percent tariff on — maybe on all imports.

And I have a question with really three parts. And first if the administration chooses to pursue such policies, how would you prevent those countries affected from imposing similar duties on American exports?

Second, Mexico, as you probably know, is our second-largest export market for goods, and the top three exports in 2015 were machinery, electrical machinery and autos — vehicles. If Mexico were to impose a 35 percent duty on American exports, any idea what would be the impact on manufacturing?

And third, what role would our government have in assisting those maybe small businesses that were harmed, and even not-so-small businesses harmed, for workers that might be displaced by the closing of international markets to our domestic manufacturers?

MNUCHIN: Well, first of all, those are all good issues. And let me assure you from my conversations with the president-elect on trade, and I have discussed a lot of the trade issues with him. I've also had the opportunity to work closely with Wilbur Ross over the campaign, who is also very involved in trade, as well as Peter Navarro who will be in the White House.

And trade, I think as you know, at least certain enforcement issues of trade cut across both the Treasury, the Commerce and the USTR. So, I will be working with the other people on a unified position on trade.

Where the president-elect has talked about, I've never heard him talk about 30 or 35 percent tariffs across the board. I have heard him specifically say, well, if certain companies want to move their jobs, we're going to specifically put a tariff on them. OK?

Now, I think that that's something that needs to be looked at. And I don't think that it's a plan that's going into action. I share your issues that this is as much about growing exports as it is about growing imports. And specifically with Mexico, I think most people acknowledge NAFTA was negotiated a long time ago; that we should reopen this agreement.

CARPER: Actually, we did. And we did it in the context of TPP, as you know.

MNUCHIN: I understand that.

CARPER: And my hope is that when — when you all get settled in, that you'll go back and when you're thinking about renegotiating NAFTA, make sure we understand what has already been done.

MNUCHIN: I would hope that the starting point is the work that you've done. And I'm optimistic that we can renegotiate that deal that's both advantageous to us and advantageous to Mexico; that it's a win-win for both countries.

CARPER: Good. Last thing, when you're mentoring and giving advice to the president-elect, another word of advice from my parents to my sister and me — and it probably works on the tariff, the imposition of tariffs, is what goes around comes around. You might want to keep that in mind.

Thank you.

MNUCHIN: Just to clarify the record, I'm not mentoring him. He's mentoring me.

CARPER: I'm not so sure.

MNUCHIN: But I do give him advice. I wouldn't clarify that as mentoring.

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HATCH: Senator Cardin?

CARDIN: Thank you, Mr. Chairman.

I want to get to the tax issues for a moment. We had a chance to talk about that in my — in the office. And I think we all would acknowledge that our income tax rates, personal and corporation, on global competition puts the United States at a disadvantage. It's something we need to deal with. We also recognize that from a business tax point of view, it's not just the corporate rate, it's also the individual rate, since 90 percent-plus of businesses pay the individual rate.

I want to talk about two standards that I hope will judge the review of tax reform, so that we can have a simplified tax structure, one that's fairer to the American people.

One, I would hope that you would agree that we do not want tax reform to increase the size of the federal deficit.

MNUCHIN: I'm taking notes. If you want me to answer them one at a time or...

CARDIN: Well, the second is that tax reform should be at least as progressive as our current tax code. That is, middle-income families should not be asked to pay more in regards to our tax code.

MNUCHIN: So, and again, on both those issues I share your concerns. On the first one, again, we do believe in dynamic scoring and with the appropriate growth, I think we want to make sure that tax reform doesn't increase the size of the deficit.

And in regards to the second issue, as I've said in my discussions with the president-elect, he is very interested in us providing a middle-income tax cut. That is his priority.

CARDIN: And I would just urge on the first part that recognize that we have to be disciplined as we deal with the federal budget. And I would hope we would have consistent rules in regards to both spending and tax cuts as to the dynamic nature of those types of activities. It's a lot easier for us to use the current rules because they're objective and we have professionals who give us the ground rules. When we start using subjectivity, it could be abused. At the end of the day, we could have much larger deficits.

But your point is you do not want to add to the deficit of the country.

MNUCHIN: That is correct.

CARDIN: Through tax reform. And secondly, you want to make sure that middle-income families are not disadvantaged by the tax code.

So here's the challenge. You also believe we should be competitive globally because you want to grow our economy in regards to exports. It's difficult to see how you can get that done within the context of using just income tax revenues. Because the United States, among the industrial nations of the world, has a relatively low part of its economy tied up in government. And yet we have marginal tax rates that are among the highest in the industrial world.

The reason, of course, is that we don't use a consumption tax and every other industrial nation uses a consumption tax. So without bringing in other sources of revenue, we're going to have a very difficult time to get those competitive tax rates.

So I'd just urge you, as I did in my office, to take a look at a progressive consumption tax. It is border-adjusted. It does reward savings and does make our tax code not only competitive, but gives us a competitive advantage over the industrial nations of the world.

MNUCHIN: Well, again I appreciated meeting with you and talking about these issues and will follow up. And, you know, again under the appropriate growth numbers, as I've said, with dynamic scoring, you know, we're not looking to grow the deficit. And obviously, one of the concerns is the size of the debt and how it's gone up.

In regards to your other issue, you know, one of the issues, and this impacts trade policy, is we don't have a VAT tax system. We have an income tax system, and other countries do. And that's one of the things that...

(CROSSTALK)

CARDIN: And of course, the rest of the world uses consumption taxes that is border-adjusted. We use income taxes. Income taxes are not border-adjusted. That makes it difficult for us to grow exports.

So it also, of course, does not reward savings, which is another area during the best of times, America's savings ratios are not competitive with other countries. We could use more incentives for savings, which is the other area that we talked about in my office, that Senator Portman and I and others have worked on. And that is to increase the opportunities for Americans to save, particularly in retirement savings.

That I don't believe would be a partisan issue. And as we are working toward major tax reform to try to make our tax code fairer and more competitive, I would urge you to work with us on retirement savings and other savings initiatives that we could make progress, I think, in a relatively short period of time.

MNUCHIN: I look forward to working with you. Thank you.

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CARDIN: Thank you, Mr. Chairman.

HATCH: Thank you. I — I have to apologize to Senator Stabenow; she should have been next. So, we'll start with you now.

STABENOW: Well, thank you very much, Mr. Chairman, Mr. Chairman, I want to thank you very much for allowing us to have an opportunity to fully ask questions in multiple rounds. We really appreciate it, and the way you're conducting the hearing, so.

HATCH: Well, I hope we only have two rounds.

STABENOW: Yes, but thank you, thank you for allowing that in. And Mr. Mnuchin, this really is a physical marathon, I think, of endurance in just the nomination hearing. So we — we appreciate your hanging in there as well.

MNUCHIN: Thank you.

STABENOW: A couple of different things. First of all, following up colleagues speaking about jobs going overseas, obviously a very critical issue for Michigan. We make things, we pride ourselves on making things and manufacturing is one of the most significant parts of the economy.

I've been working for a number of years on a bill that we call Bring Jobs Home Act, that would end the ability of a company to write off the cost of moving overseas. I mean, I don't know why, if a facility is closed, the workers and the taxpayers and the community should pay for their move. And that certainly seems in line with that our incoming President has said. Would you support stopping that write-off?

MNUCHIN: I — I look forward to working with you on that. I can tell you it sounds like something the President-Elect would like. So I look forward to working with you on that.

STABENOW: Well, I think it's important that we take step one. (inaudible) all of the loopholes that are, first one is we shouldn't pay for the move. So I appreciate and hope that that's something that will be embraced.

Different subject. I know colleagues have talked about pensions, which are critically important. People — you know throughout their lives often given — giving up a pay raise to put money into a pension. This is very serious what's happening to pensions around the country. And certainly, whether it be a multi-employer pension or single-employer pension, deeply concerned about what's happening to people.

We know that we heard that from the GAO in 2013 that, if there was a multi-employer pension fund to become insolvent, a very large troubled plan, then we could see an estimated benefit paid by the PVGC to be reduced less than 10 percent of the guaranteed level. So, you'd be talking about somebody who worked hard all their life that would be getting \$2,000 a month, and then could end up with \$125. Seems to me that's a pretty basic promise that we need to keep.

And rather than ask you to comment at this point, I'm going to go on to the other — the other piece of keeping our promises, but — and ask you to respond to both. One is the pension and the other is Social Security. And as Treasury Secretary you will be a trustee, a very important position. And I — I think it's important to know if you're committed to upholding the new President's promise in May of 2015 that he would not support cuts to Social Security.

MNUCHIN: I absolutely support the President's promise, that's why I'm here.

STABENOW: And, secondly, what's a cut? I mean we — we have heard increases in the retirement age. Is that something that you would support?

MNUCHIN: Again, I've heard the President's promise, and I would sit down and discuss it with him. And I'm happy to work with you on the specifics. But I — I haven't discussed the specifics with him, but I know from a high level how he feels.

And just going back to the pension fund issue, it is a — I acknowledge it's a very significant issue and something I look forward to working with you and your office on.

STABENOW: This is very real for people, and just as the financial crisis created a serious situation for people and homes, and for financial institutions, we all know pension funds were involved in that as well, and somehow didn't make it to the top in terms of being able to be made whole. And so I think that's an unfulfilled promise and obligation that our country still needs to keep.

On Social Security, though, there are a lot of ways. I mean, what's a cut? A lot of different ways to look at this. And whether it's raising retirement age, change CPI, progressive price indexing, privatization, cuts in the amount of benefits, I mean all of these things would reduce a retiree's or worker's lifetime benefits as they become a retiree. And all of them are extremely significant.

Just out of curiosity, do you know the average Social Security benefit per month?

MNUCHIN: I do not, I apologize.

STABENOW: One thousand, two hundred, and twenty-eight dollars and 12 cents. Not a lot to live on.

MNUCHIN: No, it's not.

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STABENOW: And for a third of the seniors in the country, that's 90 percent or more of their income. So, thank you very much.

MNUCHIN: It's a very significant issue, and I appreciate that. And, if I'm confirmed, I look forward to working with the President-Elect on this important issue.

STABENOW: Thank you.

HATCH: Thank you, Senator, Senator Brown.

BROWN: I've been, please — Mr. Mnuchin, thank you, and I'm sorry you had to hurry through lunch.

MNUCHIN: That's OK.

BROWN: I saw you sitting in the back room, eating a — a lunch probably that you've eaten faster than any time lately. So, thank you for that and your patience.

I've been pleased the President-Elect's been committed to helping manufacturers. He wants to buy American, hire American. I'm sending him a letter today — this a letter that I will hold up — to let him know I'll be introducing legislation to extend buy American to all federal infrastructure construction and public works projects. If taxpayers pay for it, whether it's a water and sewer system or a bridge, or whether in steel or iron, or whether it's cloth for an American flag in Akron, Ohio, over the post office, if taxpayers pay for it, our companies and our workers should build it. So, I just wanted to let you know that.

Now I want to talk to you about China. I've never met a Goldman — Goldman Sachs banker who wanted to get tough on China. Based on your Wall Street background and financial dealings, I'm concerned about just what I've seen in the past with bankers and — and what I would say is soft on China.

Let me lay out a couple things. Relativity — Relativity Media is a Beverly Hills company invested in movies, as you know, among other things. When you were co-chair there during 2014 and '15, the company received investment from Chinese investors in the company's films and partnered with the government of the People's Republic of China to promote and distribute Chinese films.

China readily admits it wants to become more powerful by increasing its cultural influence in this country and expanding its financial stake in the U.S. film industry. You were a board member of a company that partnered directly with the Chinese government, that increased their influence in Hollywood. Were you — were you helping China expand its global power?

MNUCHIN: So, let me just first comment.

BROWN: And try to make the answer really short.

MNUCHIN: I — I — I know, but I apologize. First of all, I left Goldman Sachs 15 years ago. (This is) just going back to trade. I think of myself as a regional banker, not Goldman Sachs.

As it relates from my — my experience at Relativity, I don't — the Chinese never invested in Relativity, and I don't recall them ever having invested in Relativity films. They did have a small joint venture in China that was not particularly successful, for what it's worth.

Now in regards to my view on China, I 100 percent support the President's view, and that we need to look at China overall from a trade standpoint, and an economic standpoint, and a security standpoint. And I look forward to working with him on that.

BROWN: I — I — that's not — what you said is not from the reports we get. We will follow up by mail. Or we will follow up the letter to you to talk about that.

MNUCHIN: Happy to.

BROWN: I — I — let me shift to China. China, you know, China has great capacity in production of steel. Their distortion of the global steel market puts American workers out of jobs. You and the President-Elect talked about that in places like Youngstown, Ohio. Will you commit to make public a comprehensive plan to address global over capacity in the steel industry within the first month you're on the job?

MNUCHIN: I don't want to make that commitment, but I'm happy to work with your office on this issue.

BROWN: You don't want to make a commitment it will be the first month, or you don't want to make a commitment that you put a substantive comprehensive plan to address global over capacity?

MNUCHIN: I will make a commitment to sit down with your office, and work on this issue, and then figure out the time frame and whether we should be making it public. But I understand the issue. The President-Elect is concerned about these issues, and we'll work with you on this.

BROWN: Thank you. I want to follow up on you said you were — you left Goldman 15 years ago, correct?

MNUCHIN: I did, 2002.

BROWN: You're aware, I think, that during part of the time you were at Goldman, one of you or one of the two firms — I'm not saying you worked on this personally — but I'm saying that Goldman is one of the two firms that managed the portfolio of the Central States Teamsters' pension fund, and I think you're aware that, while Goldman was a manager of the funds of Central

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States, the plan lost 40 percent of its value, more than double the average losses for a defined pension benefit plan during that period.

Due in part to those losses, in part due to Goldman Sachs I would call mismanagement of that plan, the Central States Teamsters' pension fund, as Senators Stabenow, Nelson, and McCaskill said, is in distress and at risk of becoming insolvent. There's a certain irony that, if you're confirmed, you'll be a member of the board of the PGVC, as I think you know, and responsible in many ways for protecting the pension of more than 400,000 working families.

You, I assume don't know who Butch and Rita Lewis are, they are constituents of mine and Senator Portman's. He worked as a trucker for 40 years, he was a teamster, he led the (inaudible) Retirement Pension Committees fight against cuts to their earned benefits.

He passed away on New Year's Eve due to a stroke, which doctors have attributed at least in part, due to the stress he faced over proposed pension cuts. His wife lives in Southwest Ohio, she's taking up his fight. She will lose almost her entire pension, so I know you said you aren't for finding a way to make these pensions whole, but understand that this Congress bailed out Wall Street banks including Goldman and I hope that you'll change your mind on helping make these pensions whole.

MNUCHIN: I appreciate the significance of the pension issue and I can assure you I had nothing to do with that issue when I was at Goldman Sachs.

BROWN: I know that, but I also --- that doesn't make Rita Lewis feel any better.

MNUCHIN: I completely understand that Senator. I appreciate that.

BROWN: I just know there's an ideological antipathy in this body from its more conservative members to help the Wall Street banks, but not to help workers like Rita Lewis' husband.

HATCH: That's going a little far, I don't know anybody that wants to do that.

(CROSSTALK)

BROWN: Okay, Mr. Chairman, I'll finish my comments.

One more point that I wanted to make. Last year I worked with some manufacturers concerned at a metals warehouse owned by your former employer. Goldman was driving up aluminum costs, the Fed proposed rules to reign in merchant banking authority that allows banks like Goldman to own these metal warehouses.

We've done some hearings on that, will you make it a priority to help the Fed finish its merchant banking rules? And use Treasury's authority to address these unfair practices?

MNUCHIN: Absolutely. I'd be happy to look into that and work on that.

BROWN: Okay, thank you. I understand Treasury has joint rule making authority in merchant banking so they have a role, you have a role and I hope that you exercise it.

MNUCHIN: Thank you.

BROWN: Thank you, Mr. Mnuchin.

HATCH: Thank you Senator. I guess Senator Warner, or excuse me, Senator Heller.

HELLER: Mr. Chairman, thank you. Mr. Mnuchin, thanks for your patience. It's a long day, but I hope it's only one day. I want to talk, I don't question the President-elect's desire to replace Obamacare. He said it and I don't doubt it.

What I do question is what his positions are on all the taxes. As you know there were a dozen or more taxes in Obamacare, trillion dollars, new taxes on middle class America.

Can you clarify to me the President-elect's position on the taxes that went along with it? Does he want to keep them? Does he want to repeal them? Give me your best thoughts.

MNUCHIN: So first of all, again, I just want to again apologize that we didn't get back to you on that information. I assure you I've read my staff the riot act that this will be our top priority when we (inaudible).

HELLER: Thank you.

MNUCHIN: In regards to Obamacare, I haven't been as involved in the specifics of the repeal and replace or replace. As it relates to the taxes, my understanding is to get rid of the surcharge on that.

HELLER: Obviously there's a number of controversial taxes in there, the medical device tax of course, Cadillac Tax being another. I want to kind of hone in a little bit on this Cadillac Tax because you're well aware of it's a 45 percent excise tax on what they consider or deem to be Cadillac taxes. Most people that have what would qualify as a Cadillac Tax, doesn't come anywhere close to high end healthcare programs.

This would affect 1.3 million Nevads, 120 million Americans, we're talking seniors, unions, public employees. Go down the list that are getting hit by this by this 40 percent excise tax. Give me

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your feelings on this and your desire to repeal a tax of this nature?

MNUCHIN: I agree with you and I said I'm not as close to the whole Obamacare discussions right now, but I will definitely follow up with you on that. I agree with your view.

HELLER: It was postponed two years to 2020 from the work of Senator Heinrich from New Mexico and myself. We're working hard, what I just want is a commitment from you as we go forward on this and hopefully we can repeal what I consider to be a very erroneous tax.

MNUCHIN: Sounds like what you're saying makes absolute sense and you have my commitment to work with you on that.

HELLER: Thank you. I want to talk a little bit more about housing. 17 percent of the houses in Nevada are currently still under water, 17 percent. I want to talk about the mortgage debt tax real quick.

The IRS deems it a gift, today, that if you bought your house for \$250,000 today it's worth \$200,000. You sell it for \$200,000, they deem that \$50,000 as a gift and want to tax you on that. Now Senator Stabenow, Isaacs and Menendez, we have worked closely on this and it expired as of January first.

We have reintroduced that legislation to try to eliminate this burden on the taxpayer. I'd like to get your understanding of this, your feelings on it, where your support would be on this particular piece of legislation.

MNUCHIN: You have my commitment to work with you. If it's not bad enough that the person lost their home, but then we got to send them a tax bill. I agree with you on that.

HELLER: I appreciate your support.

Mr. Chairman that's all I have.

HATCH: Senator Warner.

WARNER: Thank you. Mr. Chairman. I just want the record to reflect, I would differ with my colleague, the Senator from Nevada in terms of characterization of most of the funding that went in for Obamacare. (inaudible) in terms of Capital Gains surcharge for folks like you and me and the higher income surcharge for folks like you and me.

I know this has not been your focus yet, but any world in any form of hocus pocus dynamic scoring scheme, the ability to say as the President-elect just said, maintain the prohibition against preexisting conditions. Keep kids on their parent's policies until they're 26 years old, make sure there is insurance for everybody and pay for it all would be a curious act.

Let me come to my questions though. I appreciate very much your earlier comments to me and Senator Kraybill about GSE reform, but I want to clear up one thing. As you're aware there have been a number of hedge funds that at the absolute demise of those Fannie and Freddie in the public markets.

They went in bottom cheap, that's what hedge funds do. They have been launched, a remarkable campaign both public and private, of lobbying that is in certain ways in terms of even character assassinations of Senators. In certain ways it's almost unprecedented.

The President-elect and you invested in one of those funds. President-elect has divested himself, I imagine you will divest yourself as well, but again in light of your firm commitment earlier not to go with some kind of recap and release scheme that would greatly enhance those hedge funds profits, I believe then leave the taxpayer holding the bag if another housing crisis took place.

I just thought you'd want to comment on that and reaffirm that commitment that you'll be looking out for the interest of the taxpayers and not some of the folks you might have invested in in the past.

MNUCHIN: I mean first of all let me just comment, I have divested my interest in that fund as well already. As I said my job is to look out what's for the best interest for the taxpayers.

Balancing on this issue, the need for housing reform and making sure that we maintain housing liquidity, making sure the taxpayers are not on the hook for that.

Whatever the legal issues are associated with, again as it relates to the entities I have tremendous expertise on the entities as it related to the legal case of various holders of different securities. I haven't studied that at all...

(CROSSTALK)

WARNER: Those of us who have been part of the reform realize that legal proceeding will continue.

One of the things you were complimentary on my business background, obviously you've had great deal of success in business as well. One of the things that business people often times bring to the political process is willing to look at things fresh.

You as a businessperson realizes, there is two sides of a balance sheet. There's revenue and there's spending.

MNUCHIN: Yes.

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WARNER: Many people come to the political process and get hired into this process by taking absolutist pledges on things like revenues. As we discussed in my office if you look and share with you the data of the 34 Industrial Nations in the world, much to the surprise of many, America actually ranks 31st out of 34 Nations in terms of total revenues as a percentage of GDP.

It affects our tax rate compared to everyone else. I know you're not probably going to fully answer this, but my hope would be, that you would not in your moving forward in this position, take one of those absolutist pledges that in an effort to try to drive down our \$19 trillion deficit, going much higher with some of these tax reform plans being put forward, that you're not going to arbitrarily take one whole half of the balance sheet off from being considered the whole question around revenues.

MNUCHIN: No, my only pledge is I'm working for the American people and will be open minded when looking at different things. The good news is not only do I have a hopefully, a new view, But we got a president who is willing to look at...

WARNER: Well, I'm gonna hold you to that because the absolutist approach which never looks at revenues is the only — leads us to the place where we are right now, where we're spending frankly the lowest level in modern American history on education, infrastructure and R&D. And that's not a good business plan.

Lemme go to two other questions, really quickly. Earlier comment and I was a little surprised at your response, having gone through the FDIC process with a relatively midsize institution.

As I'm sure you're aware, Lehman (ph) much smaller than most of the SIFI (ph) institutions, took five years in the bankruptcy proceeding (ph). And in Title II of Dodd-Frank, a bipartisan component of the bill that actually had 80 senators support, there was an acknowledgement that while we need to prepare for bankruptcy proceedings and those are the liquidation plans that these institutions have to prepare.

That if that proceeding doesn't take — couldn't take place where a bankruptcy wouldn't work, you had as a fall back, provision Title II. It would concern me greatly, if you agreed with some of the other comments that that Title II reserve that most of the large institutions actually believe (ph) strengthens the system, you'd be in favor of appealing.

MNUCHIN: Well, again, it's — it's a complicated issue.

WARNER: Absolutely. That's why I'm concerned...

MNUCHIN: So — again, I'm — I'm not suggesting that we remove Title II tomorrow without having the appropriate bankruptcy solution. And again, it depends on what — what's in bankruptcy.

So it depends about whether we're talking about a holding company that just has a bunch of sub debt and equity. Or if you know, we're talking about the bank. So again, we've had a process to resolve banks. What again, I think that we need to look at is the holding company issues.

WARNER: What I — I would simply point out, the National Bankruptcy Conference which is composed of bankruptcy judges, lawyers, believes quote, "Orderly liquidation authority under Title II should continue to be available, even if the bankruptcy code is amended."

Thank you, Mr. Chairman.

HATCH: Senator McCaskill?

MCCASKILL: Thank you.

I wanna gently take issue with my colleague, Senator Burr. It is clear that the foreign investment, the Committee on Foreign Investment in the United States does have the responsibility of looking at foreign investment and whether it impacts national security.

And clearly, as secretary of the Treasury you will have a role in that. And I think it would be hard to argue that debt owed to foreign entities could by the commander in chief and the president of the United States, that it could not have any impact on national security.

I recall that when a foreign company was looking at buying Starwood, for example, it was going to go to CFIUS for a decision. And I wanna point out for the record that if you decide somebody wants to come in and buy one of President Trump's properties and if CFIUS meets and you decide it's gonna risk national security by the location or who the foreign entity is, the ultimate decision is whose?

MNUCHIN: Well, again, lemme just assure you, I'm gonna take my role as chair of CFIUS very, very serious.

MCCASKILL: I know, but if you take it seriously...

MNUCHIN: And as it relates to — as...

MCCASKILL: But whose decision is it, Mr. Mnuchin?

MNUCHIN: Again, as — as it relates to these different views on the president's business again, you know I will consult with the internal council at Treasury in the ethics area in Treasury and determine.

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And by the way, the general council at the White House and we'll figure out the right solution and come back to you (ph).

MCCASKILL: Do you know whose decision it is, ultimately, under the law?

MNUCHIN: Yes, I...

MCCASKILL: Then whose is it?

MNUCHIN: It's mine, I...

MCCASKILL: No, it's not. It is the president of the United States. You make a decision and then it goes to the president and the president gets to decide. The same guy that I think is gonna hire in his own ethics...

(CROSSTALK)

MNUCHIN: But I need to make a decision for it to go to the president...

MCCASKILL: OK but if you make the decision that it should go to the president, I just wanted to point out for the record that ultimately, it is his call, it is not your call. But you have a chance to make a recommendation to him.

MNUCHIN: I think we can all acknowledge that we're in a — a little bit of a unique situation that we haven't had a president, like this, that owns these types of businesses...

MCCASKILL: No, in fact...

MNUCHIN: And someone who is willing again, to come into government and serve the country as president and I assure you, we will come back and talk about these issues...

MCCASKILL: That's great.

MNUCHIN: I know there's different views, here. We'll work with the chairman on this as to the purview of the committee and the appropriate lawyers on this so thank you.

MCCASKILL: That — that's terrific and it is different. And — and if we think in history that we got the annulments clause because a foreign government gave a bejeweled (ph) snuffbox to the president of the United States.

That almost seems kind of de minimis, in light of how complicated the international aspect of the holdings that the president is going to stay with, through his presidency. So I do think you're inviting a lot more questions down this line.

And while we're on this subject, besides being a former prosecutor, I'm also a former auditor. So when I heard the president-elect's pledge about profits from foreign governments going to the Treasury, my ears perked up.

Because as you well know, you benefit from income to your business, even if it's not profitable, correct?

MNUCHIN: How do you benefit of income if it's not profitable?

MCCASKILL: Well, let's say you — you're the Trump Hotel by the White House and you're losing a million dollars a year and a foreign government comes in and buys a suite of rooms for a year, which brings your balance sheet much closer to a loss of \$200,000 a year. Haven't you benefited from that income of \$800,000 a year?

MNUCHIN: I'm following your reasoning.

MCCASKILL: OK. So first of all, I think he has to in order to make good on a pledge to do this, he has to pledge to give all of his income from foreign interests. Unless, there's gonna be an auditor.

Who is going to decide if and when Mr. Trump's businesses that he has not divested from, are profitable from foreign involvement? Who's gonna make that call? Is that going to be his family? Is that going to be his ethics officer?

Are there going to be any — is there anybody who works for you that is gonna take a look at how he is determining whether or not he is profiting off foreign involvement in his wide variety of interests across the globe?

MNUCHIN: Again, I think you've raised some very interesting comments. And I'd be happy to follow-up with you. And I'm sure the president-elect will put out more information on this and I'm happy to inquire with him. So I understand your issues.

MCCASKILL: Mr. Mnuchin, is there anyone who has income under \$200,000 who will receive even a dime, from repealing of Obamacare and the tax cut that goes with it?

MNUCHIN: Again, I think we're looking at overall tax reform, OK...

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MCCASKILL: My question's about repealing Obamacare. In repealing Obamacare, you're gonna repeal the taxes that are in Obamacare, that strengthen Medicare and do all those things.

You're gonna repeal — if you repeal Obamacare, it will be a tax cut. My question is, will anyone who makes less than \$200,000 a year, receive even a dime from that tax-cut?

MNUCHIN: Again, I think we're gonna look at tax reform as overall and what it does and no different that when we — when Obamacare was put in, it was a tax hike on those people.

MCCASKILL: People who made over \$200,000 a year?

MNUCHIN: Yes.

MCCASKILL: No question. I mean, most of it was on people who make more than a million a year. So the answer is, not one dime of the tax cut that the Congress, the Republican Congress, is about to do, on the repeal of Obamacare, will go to one American who makes less than \$20,000 year.

Finally, lemme talk about pensions. You supported the bank bailout. So did I. You support the stimulus. So did I. And we talked about this in my office, I think we both agreed it was necessary in light of what our country was facing.

But to the pensions, you have an incredibly important role in the stability of guaranteed pensions in this country in the new job that you seek. I have 32,000 people in my state, that worked hard for decades, most of them driving trucks.

And they planned their lives, around their pensions. My question to you, we can find the bailout for the banks and we can provide stimulus, we can do an awful lot of things around here to help a lot of people, who have a lot of money.

Will you commit to meet with some of the truck drivers from my state, so they can look you in the eye and explain to you, that the guarantee of their pension — you know, your — your new boss did an amazing job connecting with people like these Missourians all over the country.

He looked them in the eye and said to them, I'm not gonna leave you behind. I wanna hear from you, that you're not gonna leave these people behind.

MNUCHIN: I'd be — I will — what I will say, is I will commit to meet with them. And I will commit to work with your office on us figuring out what is an appropriate, bipartisan solution to this issue; that I appreciate the pension issue we've talked about several times today is a significant issue.

MCCASKILL: Thank you, Mr. Mnuchin.

HATCH: All right.

Senator Casey?

CASEY: Thanks, Mr. Chairman.

Mr. Mnuchin, I wanted to start with a question you've no doubt come across in your preparation, and it may have been raised today that I didn't hear in the back-and-forth we had today, being at other hearings, other appointments.

Currency manipulation, which is — I mean, the simple way for me to describe it in the context of Pennsylvania is when a country like China cheats on their currency, Pennsylvania loses jobs. That's irrefutable and that's unfortunately been an all-too-common occurrence. Maybe not at this moment, but when it happens, it's a substantial hit to workers and companies across our state.

Let me just get some — some basics down in terms of the — the posture you would take and the predisposition you have on this issue were you to be confirmed as Treasury secretary.

First, this basic question: Do you believe that currency manipulation is a violation of international trade laws? And that a country who engages in that activity, that behavior, should be held accountable? Yes or no.

MNUCHIN: I do. Yes, I do.

CASEY: Second, while China's currency policies have shifted of late, would you commit to me and to this committee that if China began to manipulate its currency again, you would recommend to the president that the government formally name China a currency manipulator?

MNUCHIN: I would.

CASEY: And I'm happy to hear you answer yes to both of those, because this is the kind of issue that cuts across both parties; cuts across all different points of view.

I wanted to move to some tax issues. You and I, when you came to my office, talked not extensively, but for a little while about tax reform and your perspective on that. In particular, I wanted to focus on the middle class. Many in the incoming administration have talked about trying to help the middle class.

And correct me if I'm wrong, but I think you've repeatedly said that you want to provide a middle-class tax cut. Is that correct?

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MNUCHIN: That is correct.

CASEY: What specific provisions would you support at Treasury secretary that would get to what you would define as a set of policies or trade policies that would provide that kind of middle-class tax cut?

MNUCHIN: Well, I think there's two different issues. I mean, there are trade policies and there are tax policies. So I see the trade policies as doing things that are beneficial for the American worker and American companies. And I see the tax policies as things that will incentivize businesses to be competitive here, as well as simplify the personal taxes and reduce middle-income taxes.

CASEY: Well, I hope we can be more specific, because I — I think the American people need to know that when any deal is reached in this town as it relates to taxes, whether it's tax reform or whether it's something more limited, that the middle class doesn't get left behind as they often have in tax policy.

I shared with you that piece from the New York Times this August, Neil Irwin (inaudible) was August 12th. I remember the date because of how stunning it was, where when he did the analysis of then- candidate Trump's tax proposal, which was really an embrace of the Republican House tax plan, it — the middle class got .02 percent — big bonanza there. The top 1 percent got 5 full percentage points of additional.

Now, you may debate and say Neil Irwin's piece was wrong or other analyses are wrong. But I hope that at the end of a period of time when this incoming administration's working with a Republican Congress has had an agreement on taxes, I would hope that we would not see that kind of a bonanza, a give-away, almost an unfettered give-away to the very, very wealthy.

Last question I have gets to the basic concern that a lot of us have, is that your seeking to be not just part of a Cabinet and not just part of a government, but arguably one of the top two or three positions in a new government at any time. I think that's been true since our — the founders.

And one of the reasons why a lot of us have concerns about your record or concerns about your work and concerns about your views is that you haven't been — you haven't been through the scrutiny, frankly, that public officials go through, even appointed public officials. I know you're in the midst of that now. I know it's a lot.

Tell me in terms of your whole either life experience or work experience, what qualifies you or what has prepared you not just to do the — fulfill the duties of the office. That's one question and that's worth a significant review as we've tried to do here today.

But tell me what prepares you and what — what part of your life is relevant to the question of preparing to do public service in one of the most complicated departments of the most complicated government on the planet earth, the federal government of the United States? Some people would point to experiences they had outside of their normal day-to-day job. But tell me what you think prepares you to do public service in addition to the duties of a Treasury secretary.

MNUCHIN: Well, let me first comment on I do think I've gotten through and incredible amount of scrutiny on my investments and my private life as part of doing this.

CASEY: That's part of the deal.

MNUCHIN: I'm just saying, it's part of the deal and I've fully disclosed everything as you know.

I consider it a great honor to be able to serve the country. I think going back from the beginning of time, the ideas that citizens would come into the government and serve the people. And that's something I'm doing, no different than the President-elect Trump, OK, has been a businessman. And he decided to step away from his business and serve the country, and he spent the last two years campaigning and being on the road because he wants to serve the American people. And I share that desire.

In regards to what's prepared me, I've had several different careers. At Goldman Sachs, I had tremendous experience in both the financial markets and in technology. I think both of those are very important things and expertise for a Treasury secretary to have. After that, I've been in the investment business. And more importantly, I've been a regional banker.

I think that being actually a regional banker who's lent money, I think that I have actually a unique combination. Unlike Hank Paulson, who just ran a big investment bank, I ran a big part of Goldman Sachs. I had trading experience very similar to what Bob Rubin did, who was at Goldman Sachs and served the country.

And on top of that, I've had the added benefit of actually being a regional banker and lending to companies. And that's something that I've been doing. And on top of that, I've worked very closely with the president. I think one of the important parts of this job is the Treasury secretary has to have a close relationship. I view my job as serving the president and being a conduit between the president's mission and between the Senate and the House.

And I think I have a unique set of skills and that's why he has chosen me for the job.

CASEY: Well, just — I would add to my earlier comments in this way. This is public service. It's not just being able to fulfill a duty or a job. You're a servant of the people. There's an inscription on a building in the state capitol in my home state of Harrisburg. It's a building I worked in for 10 years. It's — it describes public service in the best way that I've ever seen. It says, "Public service is a trust given in faith and accepted in honor." And that "accepted in honor" part is challenging for all of us.

So I just hope that you bear that in mind were you to be successful in the confirmation process.

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MNUCHIN: Thank you.

CASEY: Mr. Chairman, thank you.

HATCH: Senator Menendez has one question — one more question he'd like to ask, and hopefully he'll be the last one to ask.

MENENDEZ: Thank you, Mr. Chairman.

You've heard a lot about pensions here, and I care about American workers and their pensions. And you served as director of Sears Holdings, which is the parent company of Sears and KMart, for about 12 years. You served on the Finance Committee, which was tasked with reviewing investment policies of the retirement plans of the company and its subsidiaries.

Is that correct?

MNUCHIN: That is correct.

MENENDEZ: And as the chairman and CEO of Sears Holding is a gentleman named Edward "Eddie" Lampert, who I understand is your former college roommate.

MNUCHIN: Yeah, actually the (inaudible). He's here with us today.

MENENDEZ: Oh, OK, good. So you're also an investor in the hedge fund, ESL Investments, which you're choosing not to divest yourself of, as I understand from your disclosure. The hedge fund is also run by Mr. Lampert. You earned up to \$26 million from the hedge fund last year, according to your disclosures. That same hedge fund currently holds 29 percent of its portfolio in Sears stock, and Mr. Lampert himself effectively owns 49 percent of Sears stock, according to public SEC filings. Is that all fair statements?

MNUCHIN: I think, actually, I've invested close to \$26 million. I didn't make \$26 million.

MENENDEZ: I won't equivocate with you. Now, Sears has been performing poorly, and as a result, forced to sell assets to cover operating costs, and to contribute to its pension fund.

Interestingly, several of the most valuable assets that have been sold in part to Mr. Lambert's hedge fund, including Land's End, Sears Canada, and most of Sears real estate, the real estate was sold off to a different entity whose largest shareholder is Mr. Lampert's hedge fund. And that seems to have resulted in a shareholder lawsuit, according to SEC filings.

The Pension Benefit Guaranty Corporation initiated an agreement with Sears to protect the pension benefits of more than 200,000 plan participants after the real estate deal and significant cut to health subsidies that occurred during your watch. Unfortunately, the agreement with the PBGC puts the plan's pensioners behind Mr. Lampert's hedge fund in the ability to get assets from Sears in any bankruptcy proceedings.

Because of this, because Sears has received at least \$800 million in secured loans from Mr. Lampert's hedge funds, some of them secured by Sears properties, the Sears pension fund currently faces a \$2.1 billion funding obligation gap.

Now, I take these all from filings and public reports. And I assume that — that basically is a fair statement.

MNUCHIN: That sounds about right. But let me — let me ...

MENENDEZ: Let — let me get to my question

(CROSSTALK)

MNUCHIN: OK, thank you.

MENENDEZ: ... and then I'm happy to hear your answer. Are you aware that if you are confirmed as treasury secretary, you would become one of three board members of the Pension Benefit Guaranty Corporation that has the power to either accept or deny a pension plan termination application, such as that could occur with Sears bankruptcy, making the Federal government cover Sears pension tab? Do you recognize that you're going to be part of that board?

(CROSSTALK)

MNUCHIN: Yes.

MENENDEZ: You do? Now, so here's where my concern is, and maybe you can elucidate if for me. You were a director at Sears for 12 years, where you had oversight over the administration and investment into the pension fund. That pension fund has been underfunded. Its benefits were cut while during the time you were there. It now faces a \$2.1 billion funding obligation gap.

Sears has sold off some of the most valuable assets while you've been on the board. Your college roommate's hedge fund has large interests in properties sold, numerous secured loans with Sears and owns a controlling share of Sears stock shares. You earned up to \$26 million last year from your shares in that hedge fund, and you're refusing to divest yourself of the hedge fund.

Should Sears go bankrupt, and you, if confirmed as treasury secretary, are a PBGC director who will have a role in the Pension Benefit Guaranty Corporation's attempts as an unsecured

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creditor to recover \$2 billion for the unfunded liabilities in the Sears pension fund, while simultaneously trying to not lose money in your hedge fund investments in Sears that you hold with your college roommate, who is the CEO of Sears, how is it that you're going to do that?

MNUCHIN: So, again, let me just correct again, because you said again that I made \$26 million, which I didn't. I invested \$26 million. So I just want to make sure the record stated that.

Let me first say that my original involvement with Mr. Lampert was in Kmart coming out of bankruptcy, where all the professionals thought that Kmart should be liquidated, and Mr. Lampert, and I, working for him, saved tens of hundreds of thousands of jobs.

Sears, when he bought it, was already a failing issue, and he's contributed — the company has contributed multibillion dollars to that fund, which were pension issues beforehand. So I — I'm well aware of the pension issues, and something that when I was on the board, we were very cognizant of; very significant contributions.

And then as it relates to your answer, obviously, I will recuse myself in any way as it relates to being on the board if, indeed, there ever were an issue with Sears, whether I had an investment in ESL, or I didn't have an investment in ESL. I would be concerned about any appearance of conflict, so I would recuse myself.

MENENDEZ: Well, we'll have to look at the consequences of any such recusal, because there are three members of the board who get a vote. And if you recuse yourself under those set of circumstances, I'm not sure that the remaining two can ultimately make a decision on such a case which involves 200,000 people's pensions. So it's a serious issue, and I urge your attention to it in terms of thinking about how this very well may happen. Because those pensions were underfunded, and now we're going to have a set of circumstances at some point where we're going to have to deal with it.

And so I bring it to your attention because I — I think it's a serious challenge.

MNUCHIN: OK, and again, I will work with the ethics office and the general counsel to — to work through that. And again, I would just comment that Sears inherited, when it was purchased, a (sic) underfunded, and has contributed billions of dollars to this along the way.

(CROSSTALK)

(UNKNOWN): (inaudible)

MNUCHIN: By the same token, it continued to underfunded. (sic)

HATCH: All right. Senator Wyden's going to give his closing remarks, and then I'll give mine.

WYDEN: Thank you. Thank you, Mr. Chairman. I want to review for the committee and colleagues where I think we are, both from the standpoint of process, and from the standpoint of substance.

Now, Mr. Mnuchin, months ago, you signed documents and an affidavit that omitted the Cayman Island Fund almost \$100 million of real estate, six shell companies, and a hedge fund in Anguilla. This was not self-corrected. The only reason it came to light was my staff found it, and told you that it had to be corrected.

Now, I hope you'll make another correction based on what I heard today. When we talked about the Anguilla fund, and I asked about whether you pursued this for the zero percent tax rate, you said that it was really all about helping churches and pensions. Your words, not mine.

I have an SEC document that indicates you're helping a lot of private investors as well. So I hope that you will take the comments that you have made today, which I think led most people, and all who listened in, that you were helping just churches and pensions, that they will get the exact facts and the SEC document lays that out.

Now, from the standpoint of substance, the Mnuchin Rule sounded promising to me when you said it, you know, the first time: no absolute tax cuts for the wealthy. So I and senators ... I thought Senator McCaskill was very good, probably considerably more eloquent than I, asked about the ACA. Because when you look at the ACA, it's really a Trojan horse for tax cuts for the well-to-do. And both she and I pointed out that well-to-do people would get payroll tax cuts, and it would really be paid for by the working class losing benefits.

And throughout the afternoon, when anybody would ask the question about tax policy — Senator McCaskill, myself and others — you said, "Well, it's all got to be considered as part of this big tax architecture." Your words, not mine. And you said this pretty much in response to any policy question. I'm not clear whether you knew anything about the Earned Income Tax Credit, for example, and certainly, if you did, you can include that for the record as well. But your point there was as well, it's got to fit into the overall tax architecture.

Well, the Tax Policy Center, which is the center that does the objective analyses, indicates that the Trump Plan, which you have been part of, would add billions to the — excuse me, trillions to the debt, and would disproportionately — provides a tax cut to everyone, but it would disproportionately ...

WYDEN: ...which you have been part of, would add billion to the — excuse me — trillions to the debt and would disproportionately — it provides a tax cut to everyone — but it would disproportionately favor the well-to-do. And that really gets me to my last point, the point that I'm really walking out of here with.

I feel very strongly about the tax system in America just being a broken, dysfunctional, rotting, economic carcass. My wife usually says, stop there because you're just going to frighten the children. So, I am interested in fixing this. And I can tell you're interested in fixing it as well. And I think I mentioned to you in the office that, with Republican senators, including one who the

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President-Elect wants to have run the intelligence field, Dan Coats, wrote a bipartisan bill.

But the hallmark of that bipartisan bill is it would give everybody in America a chance to get ahead. It wouldn't just be stacked all in favor of the most well-to-do. And, as far as I can tell, with respect to your views, your views indicate that you don't share that commitment to the kind of bipartisan tax approach that Dan Coats, Judd Gregg, Mitch McConnell's economic lieutenant, and I all put together.

That's what I'm walking out of here thinking about. I'm open to being persuaded certainly, if I missed something. Wouldn't be the first time. But it sure looks like that tax world, where there's one set of rules for the cops and the nurses, and another set of rules for people who are well-connected, who can pretty much pay what they want when they want to, maybe nothing at all, that that system is still going to be pretty much alive and well with your approaches to taxes.

So, I appreciate having had this chance to discuss it today, and thank you for your time, Mr. Chairman.

HATCH: Thank you, Senator. For the good of the order, I want to note that I have numerous letters and hundreds of signatories in support of Mr. Mnuchin's nomination. The support includes representatives in the banking industry, from small community banks to the American Bankers' Association, letters from groups of small business owners to the National Asian-American Coalition, to the National Diversity Coalition, for Families for a Better America, individuals from churches, non-profits, and businesses, business associations serving predominately minority communities, all over the U.S., are also included in the support for Mr. Mnuchin for the position of Treasury Secretary.

Now several of the letters, with some from people who are not personally acquainted with Mr. Mnuchin, applaud among other things Mr. Mnuchin's loan modification efforts when he had ownership in One West Bank. Now, without objection, the letters of support should be included in the record, where I think they — they — they should be.

Now let me just — let me just say this. I want to thank my colleagues on the committee for their participation here today, and I especially want to thank Mr. Mnuchin for his patience and willingness to go through this long ordeal. If nothing else, Mr. Mnuchin, I think you should be commended for your endurance.

As is typically the case with cabinet nominees for an incoming administration, the timeline for written questions is going to be somewhat abbreviated. So, I hope everybody pays attention to this. I ask that members submit their written questions for the record by 5:00 pm on Saturday, January 21st.

I'm appreciative of you and your family being here, and others who are in great support of you. And, frankly, I think you've handled yourself very, very well with very difficult questions by some of my colleagues. Some of them were really well thought out, very interesting, and good questions. But you handled yourself very well, as well as any nominee for Treasury that I've seen in the whole time I've been on this committee, and we've had some really good people who have been well-known and are still well-known, and who brought a lot to the table. I don't know that anybody's bringing as much to the table as you are.

So, I'm just hoping that you can help this country to get through its ordeals that it's just going through right now, especially the economic ordeals. And — and I hope you'll be a tremendous influence with our President-Elect. I know he wants to change things, and I hope that he can, I hope we can get this thing at least going in the right direction in this administration.

And, if it does, I have a feeling you're going to be one of the reasons it does. So, I'm just personally very grateful to you for being willing to give your time to this. I remember our discussion in the office. I said to you, I said, you're going to lose a lot of money taking this job. And your response was, I don't care, I want to serve my country. And you are going to lose a lot of money. When you had to sell off all your assets, and so forth, you've — you've made tremendous sacrifices to take this job. And I hope that our colleagues on both sides of the aisle will fully realize that, and realize how lucky we are to have people like you who are willing to give your life's work to something like this because you love the country and you're hoping that we can pull this country out of the — not only the fiscal and financial mess that we're in, but out of some other messes that literally exist that we really have to change.

So, with that, I want to thank you for your patience. I want to tell you that you've — you've certainly impressed a lot of people here, and especially me. And we're going to help you get through this ordeal, and also help you when you're there. So, just — just know that you have friends here on this committee on both sides of the aisle, and for good reason. We all know that this job is one of the most important jobs in this country's history. And I think you're the man for it, and I just want to personally commend you and thank you for doing this.

With that, we'll recess until further notice.

MNUCHIN: Thank you very much. OK.

END

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International Trade

March 7th, 2017 | Written by Wallace Gable

Enhanced CBP Investigations to Target AD/CVD Evasion

Failure to Declare and Pay May Result in Considerable Costs





Sharelines

f **t** **in** It's always been the importer's responsibility to determine if goods are subject to AD/CVD.

f **t** **in** Evasion of AD/CVD has been a concern for as long as these trade remedies have existed.

f **t** **in** CBP levied monetary penalties of \$30.6 million against importers for AD/CVD violations in 2016.

If you import into the United States, now is the time to re-evaluate your procedures on anti-dumping and countervailing duties (AD/CVD). US Customs and Border Protection (CBP) is gearing-up to implement a new enforcement authority under the Trade Facilitation and Enforcement Act (TFTEA) that may be very costly to importers who aren't taking steps to determine if the goods they import are subject to AD/CVD.

The focus of the initiative is evasion of these duties. Failure to declare and pay them for any reason – including lack of knowledge or a mistaken belief – may result in considerable costs in owed AD/CVD and potential penalties assessed by CBP.

It's always been the importer's responsibility to determine if goods are subject to AD/CVD, but in light of the new enforcement authority granted to CBP by the Trade Facilitation and Enforcement Act of 2015 (TFTEA) and the U.S. Department of Commerce's announcement establishing the Advisory Council on Trade Enforcement and Compliance (ACTEC), which also has an AD/CVD enforcement component, importers are on notice that AD/CVD will receive even more scrutiny than it has in the past.

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Evasion of AD/CVD has been a concern for as long as these trade remedies have existed. These duties are usually a percentage of the value of the goods and, although the rates vary widely, they can approach or exceed 100% of the goods' value. CBP reports that, in fiscal year 2016, it levied thirteen monetary penalties totaling over \$30.6 million against importers for AD/CVD violations involving fraud, gross negligence, or negligence. Additionally, CBP and U.S. Immigration and Customs Enforcement (ICE) seized sixteen shipments with a domestic value of more than \$5.3 million for AD/CVD violations. There are a number of ways evasion is attempted, including: declaring a false country of origin by means of fraudulent markings and/or shipping documents, and misrepresenting the product's physical characteristics to give the appearance the goods are not within the scope of an order. Although enforcement of AD/CVD regulations is a long-standing CBP priority trade initiative, Title IV of the TFTEA, entitled Prevention of Evasion of Antidumping and Countervailing Duty Orders, requires

[Commerce Initiates International Trade Enforcement Actions](#)

In order to implement its new authority, CBP has established the Trade Remedy Law Enforcement Directorate (TRLED) to conduct investigations into allegations of AD/CVD evasion. CBP notes that the existing e-Allegations system will also be enhanced to include an option enabling the general public and other Federal agencies to file evasion allegations under Title IV of the TFTEA.

What should be done to prepare for these new regulations?

Importers should review their policies and processes for ensuring the origin of goods they import is properly declared and, if applicable, that anti-dumping and/or countervailing duties are paid. Since importers are ultimately responsible for these duties, it is imperative that they know their suppliers, and have definitive and documented knowledge of where the goods are made. Visits to foreign suppliers' facilities to document production is also recommended. Importer's employees involved in customs, purchasing, and logistics functions need to be knowledgeable about AD/CVD and exercise reasonable care in determining whether any AD/CVD orders apply to imported goods.

Wallace Gable heads global trade management governance at [Livingston International](#).

establishing procedures for investigating claims of AD/CVD evasion. Interim regulations published by CBP in the Federal Register on August 22, 2016 were effective on that date. Any comments received on the interim regulations by the October 21, 2016 deadline will be considered before CBP publishes the final regulations; however, it is expected the regulations will be adopted without substantive amendment.

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February 9, 2017

U.S. Customs and the New Trump Administration: Your Top Ten Questions Answered

by [Foley & Lardner LLP](#)[+ Follow](#)[Contact](#)

Introduction

During the campaign, U.S. Customs & Border Protection (CBP) was mostly mentioned by President Trump in the context of illegal immigration. Controlling the flow of people, however, is only one of the jobs of CBP, which is part of the Department of Homeland Security. CBP also regulates what goods come into the United States, while ensuring that the goods pay the appropriate tariff (basically, a form of tax paid as a percentage of the value of the goods entered). As both the gatekeeper to the United States as well as the second-largest source of U.S. government revenue, the agency is a key regulator for many importers.

Many of President Trump's campaign proposals, while not explicitly directed at CBP, would either impact how



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To help navigate this uncertain future, this client alert presents the “Top Ten” questions that every company that imports goods into the United States should be thinking about. This client alert is part of a series of “Top Ten” articles on the future of key international trade and regulatory issues expected to change under the Trump administration. Previously issued client alerts discuss the future of [NAFTA](#)¹ and [international trade litigation](#) (including antidumping and countervailing duty actions) under the Trump administration,² as well as the top ten questions regarding the future of the CFIUS review process ([available here](#)). Future client alerts will deal comprehensively with all international trade and regulatory areas where significant change could occur under the new administration.

The Top Ten CBP Questions Answered (or, Will the Customs Change With the Times?)

1. “So what are the roles played by Customs?”

As the primary gatekeeper into the United States, Customs has a great many roles, including:

- Regulating who enters the United States



For U.S. importers, CBP regulates each product entering the United States. Ever since passage of the Customs Modernization Act in 1993, CBP has operated on the twin principles of “informed compliance” and “shared responsibility,” thereby placing primary responsibility on the importer of record to make entries correctly, but as informed by Customs outreach and educational efforts. Failure to import goods properly can result in seized entries, lost import privileges, and civil and criminal penalties.

2. “What has President Trump promised?”

Although President Trump did not focus on CBP explicitly, many of his international trade and immigration proposals run straight through CBP. These proposals include:

- Changes to U.S. immigration laws and an increased focus on border security (CBP controls entry of persons into the United States).
- The revision or elimination of NAFTA (the terms under which NAFTA-country imports enter the United States are administered by CBP).


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manufacturing interests would also require substantial efforts by CBP to block infringing goods from entry into the United States. Thus, the election of President Trump likely will have a major impact on how the gatekeeper to the territorial United States operates, impacting every company that imports goods.

3. “Isn’t Customs law pretty static? Have there been any recent changes to Customs law?”

Congress enacted the [Trade Facilitation and Trade Enforcement Act of 2015](#) (TFTEA) (signed into law on February 24, 2016), which represents the largest change in Customs rules since the Customs Mod Act in 1993.³ Among other changes, TFTEA improves intellectual property rights protection rules and establishes a new Intellectual Property Rights Coordination Center to consolidate oversight of IP-related Customs issues and to coordinate IP investigations to identify producers, smugglers, or distributors of infringing merchandise; expands substitution drawback of duties, while increasing the time periods for claiming drawback; and mandates increased cooperation among agencies and consultation with Congress on the progress made by the agency in implementing the law and improving CBP transparency, accountability, and coordination in enforcement efforts. CBP has published interim final regulations implementing a new structure that contains Centers of Excellence and Expertise, which moves certain responsibilities from port directors to a more industry-specific structure as a means of harmonizing treatment of imports at different ports.⁴



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where fines are expected to increase?

As will be discussed in Foley's forthcoming client alert regarding anticipated white collar developments in the new administration, penalties have sharply risen for many regulatory regimes. This is also true with regard to CBP penalties, which (while primarily civil) have more than doubled over the last three years (approaching \$1 billion annually). It is our expectation that this increase will continue.

Further, the DOJ increasingly has brought actions seeking criminal penalties for Customs matters. The DOJ has done so both by using statutory provisions related to Customs matters (entering goods into the United States via fraud, gross negligence or negligence,⁵ entry of goods that are falsely classified,⁶ and entry of goods by means of false statements)⁷ and through non-Customs provisions as well (the use of federal provisions regarding the obstruction of justice,⁸ the federal conspiracy statute,⁹ money laundering,¹⁰ smuggling,¹¹ and aiding and abetting).¹² Further, as explored in detail below, the U.S. government increasingly has been relying on the False Claims Act (FCA) to address shortfalls in duty collections.¹³ The use of these non-Customs provisions is notable for supporting higher criminal penalties. For example, while each count of falsely classifying goods under 18 U.S.C. § 541 is punishable by up to two years in prison, violations of the smuggling provisions in 18 U.S.C. § 545, obstructions of justice pursuant to 18 U.S.C. § 1519, and money laundering pursuant to 18 U.S.C. § 1956 can be punished by up to twenty years in prison.

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The potential changes regarding Mexican and Chinese imports are so great that we have devoted entire client alerts to potential changes in [NAFTA](#)¹⁴ and to the likely explosion in AD/CVD and [safeguard trade remedies](#).¹⁵ Further information regarding these topics are just a mouse click away.

In addition to these developments, we expect that CBP will also take the following changes that impact goods traded with these countries:

- Increasing border security, including potential changes to the C-TPAT (trusted importer) program (primarily impacting Mexico, but potentially imports from other countries as well).
- Potentially imposing some form of a border tax as a means of discouraging imports that compete with U.S. manufacturing and to take away any advantage offered to non-U.S. companies that allow the rebate of value-added taxes for exports.
- Increasing vigilance with regard to intellectual property, such as through the enforcement of an expected increase in section 337 actions.
- Increasing the rigor of the enforcement of intellectual property infringement, including through the



originating goods entitled to diminished NAFTA duty rates.

6. “I believe I have been hurt by unfairly traded imports. Will CBP under the new administration have the tools to help me with these concerns?”

The ability to file antidumping, countervailing duty, safeguard, and other trade remedy actions to address imports perceived to be unfairly traded is addressed in a previously issued Foley client alert.¹⁶ These remedies, while powerful, are not the end of the story regarding how to fight unfair imports. Two other remedies, both available at CBP, also merit special discussion.

Fighting evasion of AD/CVD orders. CBP always has possessed the ability to investigate the potential evasion of antidumping and countervailing duty orders. Yet the system clearly was not working: a [General Accounting Office study](#) titled “Antidumping and Countervailing Duties: CBP Action Needed to Reduce Duty Processing Errors and Mitigate Nonpayment Risk” found that between 2001 and 2014 CBP failed to collect \$2.3 billion in AD/CVD duties.¹⁷

Further, the perception has long existed that certain importers (often from China, but from other countries as well) are gaming the system by misdeclaring the country of origin of goods, transshipping the goods to hide the

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The result was the enactment of the TFTEA and the issuance of regulations establishing a formal process for investigations into possible AD/CVD evasion. Interim regulations (effective as of August 22, 2016, but still subject to change in the final regulations) now allow private parties to make AD/CVD evasion allegations and participate in CBP's investigation, which now must be completed on a set deadline. Under the new procedures, CBP can investigate:

- Transshipping merchandise through third countries for purposes of changing the country of origin, even where the merchandise was not substantially transformed in the third country.
- Falsely or incorrectly reporting shipping and entry documentation or engaging in false sales to underpay duties.
- Falsely labeling or reporting the merchandise's physical characteristics, or misclassifying it as non-subject merchandise.¹⁸

CBP must determine whether to initiate an investigation within 15 business days of receiving an allegation that entries, made within one year of the allegation, have been evading antidumping or countervailing duties. Suspension of liquidation of entries can occur within 90 days of initiation, if CBP determines there is a



- Extending the period for liquidating the unliquidated entries of covered merchandise that entered before the initiation of the investigation.
- Requiring importers of covered merchandise to post enhanced cash deposits and assess duties on the covered merchandise.
- Taking such additional enforcement measures as CBP deems appropriate.

CBP can refer the matter to U.S. Immigration and Customs Enforcement (ICE) for possible civil or criminal investigation.

If an interested party disagrees with CBP's determination, the party may request an internal review by the CBP commissioner, followed by a potential appeal to the U.S. Court of International Trade (CIT), which will determine whether CBP followed the proper procedures, whether its actions are consistent with the statutory and regulatory procedures, and whether its determination was arbitrary, capricious, or an abuse of discretion. CBP has stated, however, that judicial review is unavailable for any decision to not initiate an investigation — a position that eventually will be challenged in court.

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- Carefully evaluating the classification of goods imported, not just against the presumed HTS classification, but also against the physical descriptions of potentially applicable subject merchandise covered by antidumping and countervailing duty orders.
- Verifying that import records are accurate.
- Keeping all appropriate import documentation, including any information relating to the physical attributes of all entries.

Importers should also promptly respond to any CBP Form 29 Notice of Action regarding an increase in duties owed, as the underpayment of duties can be quite substantial when antidumping and countervailing duty tariffs are involved.

Intellectual property protections. Another area where CBP can be used to fight unfairly traded imports is with regard to trademarks and copyrights. Many U.S. companies are unaware that it is possible to register these IP protections with CBP at a low cost, which covers a twenty-year term. Registration requires that the brand owner provide information regarding how authorized shipments generally occur, including the place of manufacture, the name and address of each foreign entity authorized or licensed to use the trademark, a brief



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the authorized owner of the intellectual property for an additional fee. Through this process the authorized owner not only can bar infringing goods, but can also gain valuable information regarding which retailers and distributors are selling counterfeit goods.

7. “What about the False Claims Act (FCA)? Is it also a tool that is likely to see increasing use in the next few years?”

Another tool that can be used to fight the underpayment of duties is the FCA. Since the passage of the 1986 amendments to the law, the FCA (codified at 31 U.S.C. §§ 3729-33) has become a vigorous tool to fight lost government revenue, as shown by the fact that in 2014 the DOJ recovered nearly \$6 billion from FCA cases. Each successful prosecution of an FCA claim enables the potential collection of treble damages, plus penalties and an additional fine of up to \$11,000 per false claim.

The FCA provides a mechanism whereby individuals can file lawsuits regarding claims that persons and companies have defrauded governmental programs. Since the law includes a qui tam provision that allows persons who are not affiliated with the government (relators) to bring cases on behalf of the U.S. government, and to receive a portion of any recovered damages, activity under the FCA largely is driven by private actors bringing cases, with the DOJ becoming involved thereafter.

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commercial benefit to the U.S. business). In addition to securing favorable outcomes like this, the use of the FCA process also potentially brings Customs issues to the attention of CBP, which can assess its own penalties for the same conduct. For these reasons, the use of FCA claims for Customs violations is expected to continue to rise with the new administration, making FCA claims a regular part of Customs enforcement.

8. “What are the expected hot-button issues where Customs will be focusing its attention under the new administration?”

CBP is resource-challenged. Practitioners before CBP have horror stories of lost filings, requests for advisory opinions and protests that take years to resolve, and difficulties in achieving uniform rulings from port to port. Further, the port-by-port administration of CBP can make for great differences in the enforcement priorities, classification approach, and other issues encountered by individual importers. It is expected that the new Centers of Excellence program will take care of some of these issues, yet it will still be true that the issues of concern will vary by port.

Nonetheless, despite these uncertainties, we anticipate the following areas will see significant attention from CBP over the coming administration:

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record and likely identified specific problems with its import transactions, putting the company at an increased risk of a comprehensive audit. According to CBP officials, the expectation is that companies that receive these letters will soon be the subject of a “focused assessment” or other type of CBP audit in the near future. The letters, thus, are a way of encouraging major importers to enhance their compliance and file voluntary self-disclosures in anticipation of the audit.

To provide further encouragement, CBP has indicated that companies that do not follow up with a voluntary self-disclosure can expect that any subsequently discovered violations will be subject to higher-than-normal penalties. The letters warn not only of potential monetary penalties, but also the prospect of seizure or forfeiture of imported merchandise.

While the letters do not change the operative level of care expected of all importers (who are required to exercise “reasonable care” in the execution of their Customs obligations), the letters serve as a warning shot that the company needs to get its Customs house in order and should start:

- Preparing for a CBP audit
- Reviewing its Customs compliance policies

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- Determining whether free trade preferences are supported by FTA certificates of origin and appropriate regional content
- Evaluating whether off-invoice items such as royalties and assists are appropriately recognized
- Considering whether there are any other issues in the company's import data to indicate compliance failures and penalty risks

While the assessment should start with the issues identified in the letter, the review should be comprehensive. CBP auditors have the authority to examine any areas where compliance may be lacking. If issues are found, the company should consider whether the issues are systemic. If the entries are too numerous to make a quick evaluation, statistical sampling can be used to help evaluate the scope of potential issues and the potential risk exposure. Further, the review also should cover the company's Customs compliance program and the rigor of its compliance measures and training, as these are evaluated by CBP in an audit. Any errors should be documented and a plan put in place to strengthen the company's compliance procedures and internal controls to prevent their recurrence.

The company also should strongly consider filing a prior disclosure. This can be accomplished using an initial



produced, or manufactured, wholly or in part, by forced labor. Although section 307 has been in place for years, the TFTEA enhanced the efficacy of the provision by removing certain restrictions on when the provision could be applied, thereby removing a loophole which provided that the provision only could be applied if the “consumptive demand” for those goods in the United States exceeded domestic production. Under the revised law, any interested party (including competitors and public interest groups) may request that CBP investigate whether an import was produced using forced labor in another country. If the investigation proves the charges, then any products found to be made in whole or in part using forced labor are subject to exclusion or seizure.

CBP has been making the blockage of goods produced by forced labor a priority, as shown by [CBP outreach](#) on the program¹⁹ and frequent press releases announcing detention orders for violations.²⁰ Given the prominent role that criticisms of China played in the campaign, we expect this focus will increase, making it imperative that companies that import from China put in place enhanced due diligence and supply chain compliance measures, as described below.

Trade security issues. Since September 11, the enhancement of border security has been a priority of CBP, not only for immigration and visits to the United States, but also with regard to the movement of goods. We expect these efforts will accelerate under the new administration, as part of the anticipated Trump


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We also anticipate that the money being spent on the Merida Initiative, which was designed to help Mexico increase its border security in the broad sense of disrupting Mexican criminal activity and enhancing Mexican police capabilities, will be refocused on the issue of creating enhanced inspections of goods flowing between the two countries.

Revenue collection issues. Although post 9/11 border security concerns have somewhat eclipsed what was long considered the main role of Customs — the collection of tariffs on entries — tariff collection still remains a core function of CBP. In particular, we are seeing a renewed emphasis by CBP on the issues of:

- The classification of goods
- The appropriate valuation of goods, especially with regard to off-invoice items (royalties and assists, and so forth)
- The correct country of enforcement
- The importer maintaining the appropriate support for regional content and maintaining free trade agreement certificates of origin at the time of importation



9. “Sounds scary. What can I do to cope?”

All importers should evaluate whether they need to enhance their compliance measures in the following ways:

- **Enhance/Implement a Customs compliance program.** It is surprising that even large importers often do not have compliance programs in place, or have compliances measures that are dated or are not well adapted to current import patterns. Since the existence and effectiveness of a compliance program is one of the first items tested by CBP in an audit, a pro-active review of the compliance program is the starting point for enhanced Customs compliance.
- **Conduct a classification and valuation review.** Importers should regularly review the items they commonly import and confirm the accuracy of HTS classifications. These classifications should be maintained in a tariff classification database that is available to Customs brokers or any other party responsible for ensuring correct entry. Importers also should review the methodologies that are used to calculate the ad valorem value of entries, paying particular attention to transactions with affiliates and to whether the valuation includes all off-invoice items, such as royalties and assists.
- **Antidumping and countervailing duties product review.** The collection of full AD/CVD tariffs

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they should confirm that they are in a position to certify that they have not entered into an agreement to receive, and have not in fact received, any reimbursement of antidumping duties. The importer should confirm that it is consistently following this requirement, as any failure to provide the required certification will lead both CBP and the Department of Commerce to **presume reimbursement**, thereby doubling the duties to be imposed.²²

- **FTA claims.** Importers should review any FTA or duty preference program instructions to determine their accuracy. Common issues to confirm are whether the regional content requirements are met, whether required certificates of origin are at hand at the time of entry, and that all required documentation to support claimed free-trade preferences is maintained for the appropriate period of time.
- **Coordinate with freight forwarders and Customs brokers.** Importers should engage with their freight forwarders and Customs brokers to determine whether Customs requirements are being consistently followed and should coordinate required recordkeeping. Although it is acceptable to delegate responsibility for import responsibilities to third parties, the ultimate responsibility for the handling of entries is on the importer of record.



children alike). With enhanced section 307 giving CBP the tools to block more imports, companies should be pro-active in monitoring and auditing suppliers for lapses that could lead to costly detentions by CBP.

Measures to consider implementing include the following:

- **Monitor U.S. government intelligence.** The U.S. Department of Labor, in consultation with the U.S. Departments of State and Homeland Security, publishes an annual list of products believed to be produced by forced labor. Importers should monitor this list to see if the U.S. government is flagging products they commonly import.
- **Review products where the company acts as the importer of record.** Importers should be aware of all products where they commonly act as the importer of record, as doing so automatically makes them the responsible parties for dealings with CBP, including with regard to the issue of CBP forced labor inquiries.
- **Conduct a supply chain audit and perform supplier due diligence.** Because the forced labor provisions are designed, by definition, to bring in outside parties, it seldom is a good idea to wait for any CBP inquiry, as it often will not be possible to put together a response within a tight timeframe where third parties are involved. Waiting until receiving a notice from CBP of a potential violation risks seizures,

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- **Follow up on red flags.** Importers that source from countries of concern, such as China, should monitor suppliers for potential red flags that might indicate sourcing issues. Importers that discover or reasonably suspect the use of forced labor should shift to alternative sources.
- **Implement a compliance program.** All importers should have a comprehensive Customs/import compliance policy; any companies that do not should implement one. The program should be reviewed to ensure it addresses supply chain management, including provisions for limiting the potential for human trafficking and forced labor in the supply chain.
- **Gather certifications.** Importers should review all supplier agreements to confirm that they contain an affirmative certification that the supplier is: (1) aware of the company's Customs/import compliance policy; (2) abides by its terms; (3) specifically is not using any form of forced labor; (4) will cooperate with any investigation of same by the importer; and (5) will be punished if these provisions are violated, including through the requirement to cover the costs of an investigation and the termination of the supply arrangement.
- **Conduct training.** Importers should incorporate training regarding forced labor requirements into Customs/import training not only for persons who directly handle import transactions, but also for

potential second source of liability, which is Executive Order 13,627. That Executive Order, implemented into the Federal Acquisition Regulation, prohibits U.S. government agencies from acquiring products produced by forced or indentured child labor, while also implementing the requirement for government contractors to certify they neither use nor source from companies that use forced labor. The penalties for violating this prohibition include termination of the government contract, debarment, and civil and criminal punishment.

Miscellaneous items. Finally, importers should look into the following housekeeping issues, which can lead to compliance lapses and, potentially, costly penalties:

- **Data collection**

- **Request ITRAC data.** It is a good idea periodically to request an Importer Trade Activity (ITRAC) Report from CBP for the last five years as a way of gathering a copy of all data held by Customs regarding entries for the company as an importer of record. Such information can be used for compliance purposes and, in the event of a Customs-focused assessment or voluntary self-disclosure, as a complete record of all imports where the company acted as importer of record. Since CBP is transitioning to the Automated Commercial Environment (ACE) in 2017, ITRAC data



- **Sign up for ACE.** Importers that have not signed up for ACE should do so. Advantages include the elimination of paper entry summaries, decreased administrative costs, enhanced ACE report capabilities, and remote location filings for entry summaries.

- **Bond issues**

- **Bond sufficiency.** CBP monitors the sufficiency of continuous entry bonds to determine if the bond covers likely import activity. CBP determinations of inadequacy can result in increases in the bond amount over a short period of time (15 days). Failure to comply can result in CBP declaring the bond insufficient, thereby forcing the use of more expensive single entry bonds.
- **Listing multiple principals on the same bond.** Companies should consider whether it makes sense to include multiple entities on the same bond. While doing so allows for bond savings, each entity is jointly and severally liable and responsible for paying any claim regardless of which entity is at fault. Any one of the entities can terminate the bond at any time, which can cause problems if the management of the bond is not coordinated.

- **Customs broker dealings**



• Entry clearance items

- **Update names and addresses on file with CBP.** Under new procedures, CBP now maintains an importer-of-record program that seeks to more closely monitor companies that import, as a means of preventing fly-by-night importers who seek to evade duties (particularly antidumping and countervailing duties). CBP uses name and contact information from Form 5106 to communicate with importers. Importers should review the information on file with CBP to ensure the accuracy of all information and that it meets new importer tracking requirements.
- **Manifest confidential treatment.** Much of the information filed as part of the entry process is available for review by companies such as PIERS, which gather it together and sell it, including to competitors. By filing a government confidentiality request and keeping it up to date, importers can take steps to keep import data confidential.
- **Confirm your reconciliation items.** Companies that participate in CBP's Reconciliation Prototype Program should ensure they (or their Customs brokers) are appropriately flagging entries, as CBP will no longer allow a blanket flag as of January 14, 2017. A monitoring program can help ensure the reconciliation process occurs appropriately, with reconciliation being used to reflect



impacted by these specialty requirements should ensure that they are adhering to all regulations issued by the partner agencies and effectuated as they impact cross-border transactions through CBP regulations and control.

- **Updated certificates of origin.** FTAs, including NAFTA, often impose a requirement to have Certificates of Origin (COO) for anticipated duty preference claims. If these COOs are not in hand at the time of entry, then the entry is not eligible for duty preference, even if the rules of the FTA otherwise are met. Importers should work with their Customs brokers to ensure they have all required COOs on hand.
- **Steel entry requirements.** In 2016, CBP instituted special procedures for the more than 100 steel products covered by antidumping and countervailing duty orders. These “live entry” procedures are designed to require the filing of electronic paperwork and upfront duties before the release of steel products subject to these orders. Importers of steel products should ensure they are correctly classifying steel entries, declaring the goods to be covered by these orders where appropriate, and that they are adhering to the “live entry” procedures.

• Export items

maintain screening protocols that are consistently followed to prevent such dealings. Companies should also ensure that they consistently follow up on red flags indicating that goods are potentially being used/diverted for use by inappropriate end users/inappropriate end uses, such as for the support of terrorism or the proliferation of weapons of mass destruction.

- **Controlled goods.** Exporters should be certain that they have not fallen into “EAR99” mode, automatically classifying all exports as EAR99 where they are, in fact, controlled under the ITAR or the EAR. Even commercial goods can become subject to the ITAR, for example, if they are modified to meet military specifications or for military use. Companies that have not undertaken a classification review in recent years should consider performing one, particularly if they are known to export goods that are controlled by the ITAR/on the U.S. Munitions List or controlled by the EAR/have an Export Control Classification Number (ECCN).
- **Trademark and trade name protections.** As noted above, CBP has the ability to help bar entries that violate trademarks and trade names that are registered with the CBP. Companies that believe they are seeing infringing imports should consider taking steps to protect their intellectual property through the registration process or should consider whether seeking section 337 import protections is appropriate.



of a formal entry; the expansion of the American Goods Returned program (HTS 9801.00.10) to certain goods that are not of U.S. origin, but were at one time in the United States; duty-free treatment for certain goods from Nepal; and enhanced duty drawback rules (available beginning in February of 2018).

Companies also should consider whether they can benefit from ways to process or import goods outside the Customs territory of the United States or otherwise without needing to pay duties, such as through the use of Free Trade Zones, the use of Customs bonded warehouses, or through use of Temporary Importation under Bond procedures. Although the exact circumstances where such measures would apply requires individual consideration, a Customs expert may be able to identify significant money-saving opportunities.

Finally, importers of record should realize that audits of imports can result in the discovery of areas of missed opportunities under free trade agreements. Chapters 89 and 99, the potential use of FTZs, TIBs, customs bonded warehouses, and other areas where there may be money-saving opportunities. An importer can perform reviews of entry data to capture opportunities of duty overpayment. If these exist, importers may be able to file requests for refunds using section 520d claims or post-summary corrections.

Conclusion



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The international climate for U.S.-based multinational companies and non-U.S. based companies that sell into the United States has never been more uncertain. This client alert is the fourth of a series of articles that is being prepared to help companies navigate the uncertain international trade and regulatory environment. Already published “Ten Question” articles related to the transition to a new administration cover NAFTA, international trade (antidumping and countervailing duty) actions, and likely changes in how the Committee of Foreign Investment in the United States (CFIUS) evaluates investment in the United States. Future client alerts will cover the Office of Foreign Asset Controls (OFAC economic sanctions) and Export Controls, the Foreign Corrupt Practices Act, the future of white collar enforcement, regulatory concerns pertinent to Private Equity firms, and cybersecurity.

¹See Gregory Husisian and Robert Huey, “NAFTA and the New Trump Administration: Your Top Ten Questions Answered,” <https://www.foley.com/nafta-and-the-new-trump-administration-12-01-2016/>.

²See Gregory Husisian and Robert Huey, “International Trade Litigation and the New Trump Administration: Your Top Ten Questions Answered,” <https://www.foley.com/international-trade-litigation-and-the-new-trump-administration-your-top-ten-questions-answered-01-06-2017/>.

⁸ 18 U.S.C. § 1519 (2002) (“Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, ... any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States ... or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.”).

⁹ 18 U.S.C. § 371 (1994).

¹⁰ 18 U.S.C. § 1956 (2016), 18 U.S.C. § 1957 (2012).

¹¹ 18 U.S.C. § 545 (2006).

¹² 18 U.S.C. § 2 (1951).

¹³ 31 U.S.C. §§ 3729-33 (2009-2010).

¹⁴ See Gregory Husisian and Robert Huey, “NAFTA and the New Trump Administration: Your Top Ten Questions Answered,” <https://www.foley.com/nafta-and-the-new-trump-administration-12-01-2016/>.

¹⁵ See Gregory Husisian and Robert Huey, “International Trade Litigation and the New Trump Administration: Your Top Ten Questions Answered,” <https://www.foley.com/international-trade-litigation-and-the-new-trump-administration-your-top-ten-questions-answered-01-06-2017/>.

¹⁶ *Id.*